UC-NRLF
$B 269 520
YB 08162

LIBRARY
OF THE
UNIVERSITY OF CALIFORNIA.
GIFT OF
Mrs. SARAH P. WALSWORTH.
*Received October, 1894.*
*Accessions No.* 57011. *Class No.* 2 K.

# OUTLINES

OF THE

# CONSTITUTIONAL JURISPRUDENCE

OF THE

# UNITED STATES;

DESIGNED AS A TEXT BOOK FOR LECTURES,

AS A CLASS BOOK FOR

ACADEMIES AND COMMON SCHOOLS,

AND AS A

MANUAL FOR POPULAR USE.

---

By WILLIAM ALEXANDER DUER, L.L.D.
PRESIDENT OF COLUMBIA COLLEGE IN THE CITY OF NEW-YORK.

---

Est *omnibus* necessarium, nosse rempublicam.—*Cic.*

---

NEW-YORK:

PUBLISHED BY COLLINS AND HANNAY.

*W. E. DEAN, PRINTER.*

1833.

JK221
.D8

37011

*Entered according to the Act of Congress, in the year One Thousand Eight Hundred and Thirty-three, by* WILLIAM ALEXANDER DUER, *in the Clerk's Office of the Southern District of New-York.*

TO

# JAMES MADISON.

---

To you, Sir, as the surviving member of the august assembly that framed the Constitution, and of that illustrious triumvirate who, in vindicating it from the objections of its first assailants, succeeded in recommending it to the adoption of their country; to you, who, in discharging the highest duties of its administration, proved the stability and excellence of the Constitution, in war as well as in peace, and determined the experiment in favour of republican institutions and the right of self-government; to you, who in your retirement, raised a warning voice against those heresies in the construction of that Constitution which for a moment threatened to impair it; to you, Sir, as alone amongst the earliest and the latest of its defenders,—this brief exposition of the organization and principles of the National Government, intended especially for the instruction of our American youth, is most respectfully, and, in reference to your public services, most properly inscribed.

*Columbia College, N. Y.*
*August 1st*, 1833.

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/outlinesofconsti00duerrich

# PREFACE.

The following sheets are submitted to the Public in consequence of a resolution of "The American Lyceum," requesting the Author "to prepare and publish 'Outlines of the Constitutional Jurisprudence of the United States,' in a form suitable for a text book for Lectures, and a class book to be used in Academies and Common Schools."

This resolution avowedly originated from a conviction, on the part of the respectable body who adopted it, of the advantage and propriety of including the study of our political institutions in the system of general education; and the proposal seems to have been prompted by the opinion or experience of the individuals by whom it was brought forward, and who are practically engaged in the instruction of youth, that none of the existing Treatises upon Constitutional Law, were of a sufficiently popular character for the design contemplated; whilst the selection of the Author

to compile such a work, is doubtless to be ascribed to his official connection with the "Lyceum," and to the circumstance of his having, to the knowledge of several of its members, been for some time previously engaged in lecturing upon Constitutional Jurisprudence in the College over which he has the honour to preside.

It was indeed at his suggestion that this branch of study had been added to the subgraduate course of instruction in that Institution, and the duty of conducting it confided to his charge; and it was with peculiar satisfaction, though not without a due sense of its responsibility, that he had engaged in a task which, grateful as it was to him from its congeniality with his former studies and pursuits, he nevertheless apprehended would prove arduous in its execution, both from the nature of the subject, and his own views of its importance.

A knowledge of the history, organization, and principles of the political institutions under which he lives, is essential to the scholar, and must necessarily be advantageous to every man, wheresoever he may have been born, and under whatsoever form of government he

may dwell. But it is obviously of more immediate necessity and benefit in free States, where every citizen may exercise a voice, more or less potential, in the administration of public affairs; and it may even be deemed indispensable in our own favoured land, where the political rights of all are equal, and where the obscurest individual is eligible to the highest and most responsible stations in the government. It may therefore well be regarded as a defect in the prevailing systems of education, that this study should so generally have been either altogether omitted, or deferred to that period of life when our youth are called on to participate in the active duties of society; or that it should be considered appropriate to those only who are designed for a particular profession, or aspire to public employments.

Necessary, however, as is a profound knowledge of the Constitution, to the lawyer and the statesman, a general acquaintance with its principles and details is requisite to all who entertain just views of liberal education, or correctly estimate their privileges as citizens of a free Republic; and the increasing interest which has of late been manifested by the more intelligent portion of the community,

in discussions relative to the origin, structure, and principles of our political system, certainly evince that this class of citizens appreciate their political rights, and that so far, they are understood. But the information requisite cannot be implanted too soon after the mind has been prepared to receive it; and it should remain no longer a reproach to any of our higher seminaries of learning, that its graduates are sent forth into the world more familiar with the Constitution of the Roman Republic, and the principles of the Grecian confederacies, than with the fundamental institutions of their own country.

Recent events, moreover, demonstrate that a correct knowledge of the powers and duties of the National and State Governments cannot be too widely diffused nor too early inculcated; whilst, from the nature and value of that knowledge, the public interest and safety, if not the stability of our political institutions, no less than the happiness and security of individuals, require that it should be extended, in common with all the essential branches of general education, to every portion, and, if possible, to every member, of the community.

With this special end in view, the application of "The American Lyceum" was made to the Author, and was acceded to by him with similar feelings of mingled satisfaction and diffidence to those with which he had assumed the duty assigned to him in relation to the subject in Columbia College. In order in any measure to effect the object in contemplation, he conceived it proper to recast the materials he had already used in a different form, and to compose from them a new work divested, as far as practicable, of the professional character and aspect common to all previous publications on Constitutional Law. He has accordingly revised and remodelled his manuscript notes; and in thus attempting to furnish a new outline of this branch of Jurisprudence, he has avoided, as far as possible, the use of all purely technical terms, and has never introduced them unaccompanied by the explanation requisite for those to whom they are not familiar; whilst in all other respects he has endeavoured to render his production useful as a popular manual, rather than that it should be distinguished as a scientific treatise.

In a work of this description, of which the essential value must depend on the fidelity

with which the provisions of the Constitution, the legislative enactments for giving it effect, and the judicial construction which both have received, are stated and explained, it must be evident that, except as to method and arrangement, there can be little scope for originality. To that merit, therefore, the Author makes no pretensions. Upon such points of Constitutional Law as have been definitively settled, he has implicitly followed those guides whose decisions are obligatory and conclusive: upon questions which have arisen in public discussion, but have neither been presented for judicial determination, nor received an approved practical interpretation from the other branches of the Government, he has had recourse to those elementary writers whose opinions are acknowledged to possess the greatest weight, either from their intrinsic value, or their conformity with the general doctrines of the authoritative expounders of the Constitution: and in the absence both of authority and disquisition, the Author has ventured to rely upon his own reasonings, and has advanced his own opinions, so far only as he conceives them to be confirmed by undeniable principles, or established by analogous cases.

Besides the reported adjudications of the Supreme Court of the United States, the sources which have been resorted to are, the contemporaneous exposition of the Constitution by the authors of "The Federalist;" that portion of the "Lectures" of the late Chancellor of this State, Mr. Kent, which relate to the subject; Mr. Rawle's "View of the Constitution;" and the more elaborate "Commentaries" of Mr. Justice Story. To all these works the Author acknowledges his obligations, although he must lament that the last mentioned invaluable repository of Constitutional learning did not reach him in time to consult it more at large; and in regard to the abridgment of it lately published by the learned commentator, "for the use of Colleges and High Schools," it may be observed, that both from its size and mode of execution it seems to aim at more select and limited objects than those proposed by the present treatise.

With respect to the two preceding elementary treatises to which the Author has referred, it will be found that he has not coincided with the restricted views taken, in the former, of the supremacy, and in the latter, of the perpetual obligation, of the Federal Constitution; but has maintained, upon both these

important points, principles more favourable, as he conceives, to the power and stability of the National Government than those which seem to be entertained respectively by the learned authors of the Lectures on "American Law," and of the "View of the Constitution." He has not, however, differed from such distinguished jurists without being supported by the opinions of some of the most eminent statesmen of the present day, and of different parties;—by the doctrines officially proclaimed by the President of the United States, and sustained in the speeches of Mr. Webster; nor without being sanctioned, as he conceives, by the judicial authority of Chief Justice Marshall,—expressly, upon one of the points in question, and virtually, upon the other, by his affirmance of principles which are involved in its consideration, and must eventually govern its decision.

In referring to the venerable name of the present Chief Justice of the United States, the Author must be understood, on this and on all other occasions, as adopting his individual opinions, not less from deference to their official authority, than from the conviction wrought by the luminous and profound reasonings by which they are elucidated and

supported. As that eminent and revered Judge has himself declared it auspicious to the Constitution and to the country, that the new Government found such able advocates and interpreters as the illustrious authors of "The Federalist," so it may be regarded as one of the most signal advantages attending its career, that its principles should have been developed and reduced to practice under a judicial administration so admirably qualified in every respect to expound them truly, and firmly to sustain them.

The nature and design of the present publication dispense with the necessity, if they do not exclude the propriety, of marginal references to authorities in support of the positions advanced in the text. But it is believed that none are assumed without either a direct adjudication upon the point, or that collateral support which is derived from analogical reasoning and precedents, to sustain it,—or without being warranted by the practice of the Government and the acquiescence of the People. From the phraseology adopted, it may perhaps in every instance be perceived whether any point of regulation or construction be authoritatively laid down or argumentatively stated. In the former case,

the nature of the authority may be gathered from the language of the proposition; and in the latter, the premises from which a corollary or an analogy is deduced, are distinctly designated.

In arranging the materials thus collected and derived, the form of consecutive and dependent propositions has been preferred, as recommended by Professor Dugald Stewart in reference to Moral Science. This method had in substance been adopted by Sir W. Blackstone in the outlines of his original Lectures on the English Law, and has since been pursued by Mr. Justice Story in his Commentaries on the Constitution of the United States. It is, indeed, peculiarly appropriate to a work intended both as a text to be enlarged on, explained and illustrated by a Lecturer, and as a class book to be used by Teachers who must necessarily exercise a discretion in selecting such parts for recitation as may be best adapted to the age and capacities of their pupils; whilst with the aid of a proper index, it will be found equally convenient for the purposes of immediate and general reference. As to the order and distribution of the matter, the Author has again to acknowledge his obliga-

tions to "The Federalist;" whose plan in this respect he has followed with very little other alteration than that of transposing the two branches into which the subject is naturally divided.

One word more remains to be added in regard to the relation which the work may be supposed to bear to the politics of the day. That it may derive an additional interest, and, it is to be hoped, an additional value from its reference to topics which have of late so much occupied the public mind, and so much excited the passions of at least a portion of the community, will not be denied. But this arises unavoidably from the nature of the subject. It will be recollected that the adoption of the Constitution of the United States gave birth to the two great parties into which the country was divided for many years after it went into operation; and, that to this day, the different opinions prevailing in regard to its construction, as well as to the principles of interpretation applicable to it, are influenced, if not governed, by the different views originally taken of the nature of the compact. By those whose intention it had been to establish a Supreme National Government, operating upon the citizens of the

several States as individuals receiving protection and owing allegiance to the Union, it was liberally and beneficially expounded in order to effect their end. By those who, in opposition to that design, had been anxious to maintain the full sovereignty of the States, and to render the new Constitution a mere league or treaty between them, similar in its character to the former Confederation, a strict interpretation was contended for. It is therefore impossible to adopt a particular construction of the Constitution upon any point involving these original principles of opposition, without conflicting with the opinions, awakening the jealousies, or offending the prejudices, of one or the other of these parties; or, what is more to be deprecated, without appearing to enter the lists in defence of party doctrines, or being considered as enrolled under the banners of party leaders, and hazarding the hostility of those zealots upon whom the mantles of the old parties are now claimed to have descended.

To which of these parties the Author was attached; what principles he originally professed, and has ever adhered to, he is far, very far from wishing, were it even possible, to conceal. But it must be remembered that

the original distinctions between those parties had for a long time disappeared, and although the collisions and hostility between them were occasionally continued and revived, yet these contests were maintained on new and independent grounds; and the ancient tests were so far omitted or forgotten with respect to individuals, that their original creed as to the Constitution, was either lost sight of, or deemed obsolete and unimportant. It is true, indeed, that in some parts of the Union these original distinctions were to a certain degree preserved, and that of late years they have been more extensively revived; but in the contentions which have thence arisen the Author has had no personal concern or sympathy as a partizan. It is long since he withdrew from political life; and in the Judicial office which he held for some years previous to being called to his present station, he endeavoured to cultivate those qualities which the faithful performance of judicial duties imperiously demands. He trusts, therefore, that as he approached the present subject with no views or feeling of party interest, he has been actuated, in treating it, neither by the spirit of a mere politician, the partiality of an advocate, nor the

zeal of a polemic; but that he has proceeded under the influence of sentiments and habits more recently and sedulously cherished, and been enabled, as if bound by the solemn sanction of an inquest of life, "to present all things truly, to the best of his ability, without fear, favour, affection, or hope of reward."

*Columbia College, N. Y.*
*August 1st, 1833.*

# ANALYSIS.

Introduction.

I. Definition and origin of political Constitutions, as derived,
  1. From tradition, or the act of the Government itself.
  2. From written fundamental compacts.
  Either of which may be formed
    1. On a simple principle of
      1. Monarchy.
      2. Aristocracy.
      3. Democracy.
    2. Or combine these three forms in due proportions, by means of the principle of representation applied
      1. To the powers of Government; which are,
        1. The Legislative.
        2. The Executive.
        3. The Judicial.
      2. To the persons represented in the Government.

II. Foundations of representative Governments were laid
  1. *Partially*, in the British Colonies, in which were established
    1. Royal Governments.
    2. Proprietary Governments.
  2. *Universally*, in the American States, upon the establishment of independent Governments, which secured the enjoyment of
    1. The inalienable natural rights of individuals.
    2. The political and civil privileges of the citizens, designed for maintaining, or substituted as equivalents for, natural rights.

III. The same fundamental principles were recognized and adopted upon the establishment of a Federal Government by the people of the several States.
  1. In regard to the principle of representation, as applied

1. To the three great departments of Government.
2. To the individual citizens of the United States, and to the several States of the Union.

2. In regard to the distribution of the powers of Government, as the Constitution of the United States contains.
   1. A general delegation of the Legislative, Executive and Judicial Powers, to distinct departments; and
   2. Defines the powers and duties of each department respectively.

OUTLINES of that branch of Jurisprudence which treats of the principles, powers, and construction of the Constitution are therefore to be traced,

FIRST. With regard to the particular structure and organization of the Government.

SECOND. In relation to the powers vested in it, and the restraints imposed on the States.

PART I. Of the structure and organization of the Government, and the distribution of its powers amongst its several departments.

Ch. 1. Of the Legislative power, or Congress of the United States.
   1. Of the constituent parts of the Legislature, and the modes of their appointment.
      1. Of the House of Representatives.
      2. Of the Senate.
   2. Their joint and several powers and privileges.
   3. Their method of enacting laws, with the times and modes of their assembling and adjourning.

Ch. 2. Of the Executive power, as vested in the President.
   1. His qualifications; the mode and duration of his appointment, and the provision for his support.
   2. His powers and duties.

Ch. 3. Of the Judicial power.
   1. The mode in which it is constituted.
   2. The objects and extent of its jurisdiction.
   3. The manner in which its jurisdiction is distributed.
      1. Of the Court for the trial of Impeachments.
      2. Of the Supreme Court.
      3. Of the Circuit Courts.
      4. Of the District Courts.
      5. Of the Territorial Courts.
      6. Of powers vested in State Courts and Magistrates by laws of the United States.

purchased by consent of the State legislatures for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

3. To declare the punishment of treason against the United States.
4. To admit new States into the Union.
5. To dispose of, and make all needful rules and regulations respecting the territory, and other property of the United States.
6. To guarantee to every State in the Union a republican form of government; and to protect each of them from invasion and domestic violence.
7. To propose amendments to the Constitution, and to call conventions for amending it, upon the application of two thirds of the States.

Ch. 5. To the Constitutional restrictions on the powers of the several States; which are

1. *Absolute* restrictions, prohibiting the States from
   1. Entering into any treaty of alliance or confederation.
   2. Granting letters of marque and reprisal.
   3. Coining money; emitting bills of credit; or making any thing but gold or silver coin a lawful tender in payment of debts.
   4. Passing any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.
   5. Granting any title of nobility.
2. *Qualified* limitations; prohibiting the States, *without the consent of Congress*, from
   1. Laying imposts on imports or exports, or duties on tonnage.
   2. Keeping troops or ships of war in time of peace.
   3. Entering into any agreement or compact with another State, or with a foreign power.
   4. Engaging in war, unless actually invaded, or in such imminent danger as will not admit delay.

Ch. 6. To the provisions for giving efficacy to the powers vested in the Government of the United States; consisting of

1. The power of making all laws necessary and proper for carrying into execution the other enumerated powers.

# OUTLINES

OF

# CONSTITUTIONAL LAW.

## INTRODUCTION.

1. A *Constitution*, in its legal and political sense, signifies the fundamental principles on which a Government is formed.

2. *Constitutional Law*, is that branch of jurisprudence which treats of those principles—of the practical exercise of the powers of Government in conformity with them; and of the construction to be given to them—in such their application.

3. The origin of political Constitutions is as various as their different forms; and Governments in their form are either *simple* or *mixed*.

4. The simple forms of Government are
   1. *Monarchy*, where all power is vested in a *single* individual.
   2. An *Aristocracy*, where the powers of Government are exercised by a *select number*, or a single body of men. And,
   3. A *Democracy*, in which all power is retained in the hands of *the People*, or of the society at large.

5. A mixed Government, is where all three, or any two of the simple forms are united.

6. A Constitution may exist under any of these forms, if the Government be administered according to established rules and principles, and be the result of general consent, either actually expressed or fairly to be implied.

7. Hence a Constitution may be derived from traditionary information, or from the acts and proceedings of the Government itself, as well as from a written compact.

8. The formation of a Constitution, on a single principle, whether of Monarchy, Aristocracy, or Democracy, is the most practicable and easy mode; but the union of the three simple forms in due proportions, so that each shall be sufficient to support itself in the exercise of its appropriate functions, and all be made to harmonize and co-operate, is the most perfect system, and the only true basis for a *Democratical Republic.*

9. This is effected by the proper relative distribution of *the powers of Government* amongst the several *branches*, according to the principle of *representation;* whereby each is constituted, in its respective department, the immediate and co-equal representative of the People, as the direct source of its authority, and the sole ultimate depositary of the sovereign power.

10. *The powers of Government*, are distinguished from each other, as appertaining to the *Legislative*, *Executive*, and *Judicial* departments. In the first of which is vested the power of *making Laws*, or prescribing rules for the Government of the community; in the *second*, that of *executing* or carrying into effect those Laws; and in the *third*, the power of *expounding and applying* them, in their operation upon individuals.

11. In the proper organization of these departments, and the just distribution of authority amongst them, with the application of proper aids and checks to secure the necessary independence and efficiency of each, "THE BEST CONSTITUTED REPUBLIC" is alone to be attained.

12. These three powers of Government cannot be wholly united, or injudiciously blended in the same department, consistently with the liberties and security of the People; and the danger to public freedom would be equal, whether the same powers were delegated to a single magistrate, or to a numerous body.

13. If the principle of representation be extended only to a part of the Government, and other parts exist in it independent of that principle, the security afforded by the one is partial and uncertain; whilst the danger to be apprehended from the other, will be in proportion to its predominance in the system.

14. As representation may be partial in regard to the powers of Government, so it may be confined to a portion of the community; and in this respect the system would be objectionable in proportion to the numbers unnecessarily excluded from representation, or from the exercise of a free and intelligent voice in the appointment of their representatives.

15. According to the theory of a Republican Constitution, the right of representation is universal in reference both to the powers of the Government, and the delegation of their exercise; but in practice there are exceptions in the application of the rule, which do not, however, impair it as a general principle.

16. The great advantage of a written Constitution

consists in its accurately defining the limits of the three great departments of Government, and by proper checks and securities preserving unimpaired the principle of representation in regard to the exercise both of the powers of Government, and the right of delegating them to the representative.

17. Where the Constitution depends on tradition, or is to be collected from the proceedings of the Government itself, there can be no stability in the system, and of course no certainty of security under it; as every new act of the Government may introduce a new principle, and the Legislative power may, from its omnipotence, alter the Constitution at its pleasure.

18. A written Constitution, therefore, is most conducive to the freedom, security, and happiness of individuals, as it may be appealed to by the People and enforced by the Judicial power as a fundamental and paramount law, binding on the Legislature itself.

19. The foundations of a Government formed on the principle of popular representation, were laid in the United States by the institutions which, as Colonies, they received from England.

20. Two sorts of provincial Governments were established by Great Britain in her American Colonies; first, *Royal Governments*, in which limited territorial grants were made to settlers, reserving the general domain to the Crown, and providing for the exercise of the whole political and civil jurisdiction under its authority; and secondly, *Proprietary Governments*, in which the whole territory and jurisdiction were granted by the king to one or more individuals.

21. In the one, *the Chief Executive Magistrate* was appointed by the Crown; in the other, by the *Proprietaries.* In both, *the Legislative power* was vested wholly or partially in the People, subject in the one case to the control of the king in council, and in the other to that of the proprietaries.

22. In some few of the Colonies the Supreme Executive Magistrate, and one branch of the legislature, were at first elected by the People, and in two of them so continued to be chosen until the Revolution; and in all these cases the power of legislation was uncontrolled by the parent State.

23. The powers of the Crown being abrogated by the declaration of independence, the People remained the only source of legitimate authority in all the Colonies; and Governments, representative in all their branches, were established by them as free and Sovereign States.

24. In general, the Legislative, Executive, and Judicial departments were kept so far distinct as to render them, in a great degree, independent of each other.

25. The State Legislatures were for the most part divided into two branches, both chosen by the People; and all persons holding offices of trust or profit were excluded from them.

26. The Supreme Executive Magistrate was universally rendered elective for a limited time; and the superior officers in the Judicial department received their appointments from the Legislature or the Executive, and in most cases held their offices *during good behaviour.*

27. The civil and municipal institutions derived from Great Britain were in general preserved by the several States, so far as they were compatible with the abolition of regal authority and Colonial dependence.

28. Amongst these institutions was the *Common Law* of England, which, before the American Revolution, had been generally established as the municipal code of the British Provinces, so far as it was applicable to their situation and circumstances; and the benefit of it was claimed by the first general Congress as a branch of those "indubitable rights and liberties" to which the respective Colonies were entitled.

29. By this system of Law, the absolute and inalienable rights of the Colonists as individuals, were recognized and secured to them; their relative rights, or political and civil privileges as members of society, regulated and maintained; and offences against public justice investigated and punished.

30. The most essential of these privileges were those natural rights which are common to all mankind, and which, in virtue of certain fundamental laws of England, were held to be the peculiar birthright and inheritance of every British subject.

31. They consist either of that portion of natural liberty which is not required by the Laws of society to be surrendered for the public benefit; or, of those civil privileges which society engages to provide in lieu of them.

32. The former comprehend

1. The right of *personal security;* which consists in the uninterrupted legal enjoyment of life, health, and reputation.

2. The right of *personal liberty;* which includes the power of removing the person to whatsoever place inclination may direct without restraint, unless by due course of law. And,
3. The right of *private property;* or the free use and enjoyment of a man's own acquisitions, without control or diminution, except by the Laws of the land.

33. The subordinate privileges of a similar character, to which the Colonists were entitled in lieu of those natural rights surrendered for the general benefit, were,

1. The constitution, powers, and privileges of their provincial assemblies, which were intended to preserve the Legislative power exercised over them in due health and vigour, and to prevent the enactment of Laws destructive to general liberty.
2. The limitation of the King's prerogative by certain and notorious bounds; which was designed as a guard upon the Executive power by retaining it within the rules established by fundamental Laws.
3. The right of applying to the Courts of justice for the redress of injuries, and of having justice administered impartially and speedily; the most valuable incidents to which were the right of *trial by jury;* and the benefit of the writ of *Habeas Corpus*, as the most effectual security of the right of personal liberty.
4. The right of petitioning the King, or either branch of the Legislature, for the redress of grievances; and,
5. The right of every individual to keep arms for his defence, suitable to his condition and degree; which was the public allowance, un-

der due restrictions, of the natural right of resistance and self-preservation.

34. Upon the establishment of independent Governments, the several States provided for the secure and permanent enjoyment by their respective citizens of their natural rights, and of the civil privileges designed for their maintenance, or substituted as their equivalents.

35. As additional safeguards, they secured to every individual freedom of speech, and the liberty of the press, uncontrolled by any but proper moral restraints.

36. Some of the States expressly recognized, and others tacitly adopted, the English Common Law as further modified by the change of Government; but they universally abolished that feature of the system, which is essentially political,—*the right of primogeniture.*

37. The same natural, political, and civil rights and privileges which had been declared to be the inalienable inheritance of the People as citizens of the respective States, were, on their becoming parties to the federal compact, expressly asserted to belong to them as citizens of the Union.

38. The Common Law, in its modified form, constitutes, therefore, the basis of the laws of all the original members of the Union; and the Constitution of the United States, as well as the Constitutions and Laws of the several States, were made in reference to the pre-existing validity of that system, both under the Colonial and State Governments.

39. Although the existence of the Common Law

is presupposed by the Constitution of the United States, and referred to for the construction of its powers, yet it seems, that under the Federal Government, the Common Law, considered *as a source of jurisdiction*, never was in force; but, considered *as the means or instrument of exercising jurisdiction*, that system of municipal jurisprudence does exist in full validity.

40. The Constitution, founded on this basis and on these principles, and formed from these materials, was "ordained and established" by "the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to them and their posterity."

41. By the terms of the compact, the States, as members of the Union, are no longer regarded in their sovereign and corporate capacities, as they surrendered such portions of their sovereignties as were requisite for the purposes of National Government; retaining, however, their previous organization and the exclusive control of their local concerns.

42. The former compact between *the States*, was annulled; and *the People of the several States*, by their ratification and adoption, in their respective conventions, of the new Constitution proposed to them by the General Convention who framed that instrument,—united with each other in establishing a permanent system of National Government, operating directly upon individuals, for the attainment of specific objects, for which neither the States separately, nor the former confederation between them, had proved competent.

43. The principle of representation is nevertheless applied in this Constitution, not only to the individual citizens of the United States, but also to the individual States of the Union; and it pervades the three great departments amongst which the powers of Government are distributed and apportioned.

44. The Constitution of the United States contains a general delegation of the Legislative, Executive, and Judicial powers to distinct departments, and defines the powers and duties of each branch respectively.

45. It may therefore be most conveniently examined; *first*, with regard to the particular structure and organization of the Government, and the distribution of its powers amongst its several departments; and, *secondly*, in relation to the nature, extent, and limitation of the powers vested in the National Government, and the restraints imposed on the States.

---

## PART FIRST.

### ON THE STRUCTURE AND ORGANIZATION OF THE GOVERNMENT, AND THE DISTRIBUTION OF ITS POWERS AMONGST ITS SEVERAL BRANCHES.

46. The Legislative power, granted by the Federal Constitution, is vested in a Congress of the United States, consisting of a Senate and a House of Representatives; both chosen periodically,—the former by the States, the latter by the People.

47. The Executive power is vested in a President of the United States, elected, with a Vice President,

for a term of years, in a mode and upon a principle which in effect combine the suffrages of the People with those of the States.

48. The Judicial power is vested in one Supreme Court, and in such inferior Courts as Congress may from time to time establish,—the Judges of which hold their offices for life, unless sooner removed on conviction for misbehaviour.

49. The rule inculcating the separation of the Legislative, Executive, and Judicial departments, is not understood to require, in its application, that those branches should be wholly unconnected with each other.

50. For unless they be so far connected and blended as to give to each one a constitutional check upon both the others, the degree of separation which the rule requires cannot in practice be maintained.

51. The powers proper to one department should not be directly and completely administered by another, nor should either branch possess, directly or indirectly, an overruling influence or control in the administration of the powers of both or either of the others.

52. In order to maintain the requisite partition of power amongst the respective departments, the interior structure of the Government should be so contrived as to render its several constituent parts, by their mutual relations, the means of keeping each other within their proper spheres.

53. The Constitution of the United States renders the mutual participation, to a limited extent, of the several branches of the Government in each other's

power, subservient to their mutual independence; and thus the apparent violation of a fundamental principle affords the best security for its preservation.

## CHAPTER I.

### OF THE LEGISLATIVE POWER.

54. Under this head may be considered: *First*, The constituent parts of the Legislature, and the modes of their appointment: *Secondly*, Their joint and several powers and privileges: and *Thirdly*, Their method of enacting Laws, with the times and modes of their assembling and adjourning.

I. *Of the constituent parts of the Legislature, and the modes of their appointment.*

55. All Legislative powers granted by the Constitution, are vested in a Congress of the United States consisting of a Senate, and a House of Representatives.

56. This division of the Legislature into two coordinate branches, was meant to guard against the evil consequences of sudden and strong excitement and precipitate measures, which had been found to prevail in single legislative bodies.

57. A hasty decision is by no means so likely to be made, when a measure is liable to be arrested in its progress; and after its adoption by one branch of the Legislature, to be again subjected to the same forms and solemnities of deliberation, and to the jealous and critical revision of another body sitting in a different place, and from the delay thus induced, if from no other cause, enabled to avoid the prepossessions and correct the errors of the first.

58. Single Legislative assemblies without check or counterpoise, or a Government with all authority collected in one body or department, have been found, in all ages in which they have existed, corrupt and tyrannical dominations of majorities over minorities, uniformly and rapidly terminating in despotism.

59. The instability and passion which had marked the proceedings of two of the State Legislatures, consisting originally of a single House, were the subject of much public animadversion at the time of the contemplated establishment of the new Federal Government; and in subsequent reforms of their Constitutions, the People of the particular States referred to, were so sensible of this defect, that in each a Senate was introduced.

60. These examples, as well as the experience afforded by some of the proceedings of a Congress consisting of a single branch, and uniting in itself all the Executive and Judicial authority of the Union, with all the Legislative powers granted by the articles of confederation, must have had due influence in determining the Federal Convention to divide the national Legislature into two branches.

61. A further reason for this division of the Legislative power in the Government of the United States, arose from the combination of the national and federative principles in the new Constitution.

62. Upon just principles of public polity, it is essential, when a People are thoroughly incorporated into one nation, that every district or territorial subdivision of the community should have its *proportional* share in the Government; and that amongst independent sovereigns, bound together by a simple league, the parties, however unequal in respect to territory

and population, should each have an *equal* voice in the public councils.

63. It was therefore proper, that in a Republic, partaking both of the national and federal characters, the Government should be founded on a combination of the principles of *proportional*, and *equal*, representation.

64. The application of this rule of combined representation afforded a convenient and effectual mode of dividing the Legislature of the Union into two co-ordinate branches, by constructing one of them upon the principle of *proportional*, and the other upon that of *equal*, representation.

65. *The House of Representatives* is accordingly constituted with as much conformity as practicable, to the principle of *proportional* representation; but not entirely so, as it is composed of representatives of *the People of the several States*, and thus far partakes of the federative quality.

66. It consists "of members chosen every second year by the People of the several States," and "the times, places, and manner of holding elections for representatives are prescribed in each State by the Legislature;" but to guard against the neglect or refusal of the States to exercise this power, "Congress may at any time by law make or alter such regulations."

67. The electors of representatives in each State must possess "the qualifications requisite for electors of the most numerous branch of the State Legislature;" and these qualifications are not uniform, as the Constitutions and practice of the several States in relation to them are different and various.

68. In general, the qualifications of electors of the most numerous branch of the State Legislatures, are, that they be of the age of twenty-one years and upwards, free resident citizens of the State, and have paid taxes thereto.

69. In some of the States they are, morever, required to possess property of a certain description and amount; in some to be *white*, as well as *free*, citizens; and in others to possess all these qualifications, either together, or in different combinations.

70. A representative in Congress must have attained the age of twenty-five years, and been seven years a citizen of the United States; and must, when elected, be an inhabitant of the State in which he is chosen.

71. Representatives are apportioned amongst the several States according to their respective numbers, which are determined in each State by adding to the whole number of free persons, (including those bound to service for a term of years, and excluding Indians not taxed), three fifths of all other persons.

72. The Constitution provides for an actual enumeration of the people within three years after the first meeting of Congress; and directs one to be taken within every subsequent term of ten years in such manner as Congress shall by law direct.

73. The number of Representatives cannot exceed one for every thirty-thousand of the persons to be computed; but each State is entitled to at least one Representative.

74. The *ratio* of representation is applied to the representative numbers of the respective States, and

not to the aggregate numbers in all the States; nor can an additional representative be assigned to any State on account of any fractional number, which may remain after the application of the *ratio* to its representative numbers, even though the fraction exceed 30,000.

75. *The Senate of the United States* is constituted upon the principle of *equal* representation; which, while it gave effect to the main design of a separation of the two branches of the national Legislature, was evidently the result of a compromise between the larger and the smaller States.

76. The Senate accordingly consists of two Senators from each State; and each Senator has one vote: each State, therefore, has its equal voice and weight in the Senate of the Union, without regard to disparity of population, wealth, or territory; yet as the Senators vote individually, without regard to States, the Senate, in that respect, partakes of the *proportional* or national quality.

77. The Senators are chosen by the respective State Legislatures; and if vacancies happen during the recess of the Legislature, the Executive power of the State may make temporary appointments until its next meeting, when the vacancy must be filled in the ordinary manner.

78. This mode of electing Senators favours a select appointment, and gives to the States such an agency in the formation of the general Government as preserves their separate existence, and renders them, in their political capacities, active members of the federal body.

79. The State Legislatures respectively prescribe

the times, places, and manner of holding the elections for Senators, as well as of Representatives in Congress; and Congress cannot alter such regulations with respect to the *place* of choosing Senators.

80. The Constitution does not direct whether the appointment of Senators shall be made by the *joint*, or by the *concurrent* vote of the two branches of the State Legislatures; hence difficulties have arisen as to its true construction.

81. The difference between the two modes is, that on a joint vote, the members of both branches assemble together and vote numerically; whilst a concurrent vote is taken by each House voting separately; when the decision of the one is subject to the approval of the other; and the difficulties in question have arisen in cases of their disagreement.

82. It has been considered in some of the States, that, consistently with the Constitution, the Law may direct Senators to be chosen by the joint vote or ballot of the two branches of the Legislature, in case they cannot separately concur in a choice, or even in the first instance, without making such attempt.

83. This construction has been found too convenient in practice, and has been too long settled by the repeated recognitions of Senators so elected, to be now disturbed. But if the question were a new one, it might be maintained, that when the Constitution directed the Senators "to be chosen in each State by the Legislature thereof," it meant the Legislature in its true technical sense, consisting of two coordinate branches acting in their separate capacities, with a constitutional negative on each other's proceed-

ings, and not the members of the two Houses assembled in one body and voting indiscriminately.

84. Senators are elected for a term of six years, and are arranged in three classes in such a manner that the seats of one class become vacant, and one third of the Senate must be regularly chosen, every two years; corresponding with the expiration of the term for which the House of Representatives is chosen.

85. From the superior weight and delicacy of the trusts confided to the Senate, the Constitution declares that "no person shall be a Senator that shall not have attained the age of thirty years, and have been nine years a citizen of the United States; and who shall not, when elected, be an inhabitant of the State for which he shall be chosen."

86. No Senator or Representative can, during the time for which he is elected, be appointed to any civil office under the authority of the United States, which shall have been created, or of which the emoluments shall have been increased, during that time; and no person holding any office under the United States, can be a member of either House during his continuance in office. But it is sufficient if he resign the same previously to taking his seat in Congress.

87. The next subject of consideration, in regard to the Legislative power, is,

II. *The privileges and powers of the two Houses of Congress, both aggregately and separately.*

88. In order to preserve a pure and genuine representation, and to control the evils of irregular and tumultuous elections, each House is made the sole

judge of the elections, returns, and qualifications of its own members.

89. As each House acts in cases where this power is exercised, in a judicial capacity, its decisions are regulated by known principles of Law; and they should be strictly adhered to as precedents, for the sake of uniformity and certainty.

90. A majority of each House constitutes a *quorum* for the transaction of business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

91. Each House is bound to keep a journal of its proceedings, and from time to time publish such parts of them as do not require secrecy; and to enter the *yeas* and *nays* on its journal on any question, if demanded by one fifth of the members present.

92. The members of both Houses are entitled to receive a compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. And they are in all cases, except treason, felony, and breach of the peace, privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same.

93. In order to preserve inviolate the freedom of deliberation, no member of either House can be questioned in any other place, for any speech or debate therein.

94. Although no express power is given to either House to punish for contempts, unless when commit-

ted by its own members; yet a power, extending beyond their own precincts, and affecting other persons, is exercised by both Houses, as incident to the nature of every Legislative body.

95. As the People are entitled to the utmost purity and independence in the conduct of their representatives, and as each House is, in this respect, the guardian of the interests of the People, as well as of its own character, it is its duty to make immediate inquiry into any attempt on the freedom or integrity of any of its members.

96. From the duty to inquire, arises the right to punish in such cases, as well as in cases of immediate insult or disturbance, preventing the exercise of its ordinary functions; the existence and the exercise of the right in both cases, being equally founded in the necessity of self-preservation.

97. But the power to punish in either case, extends only to imprisonment, which can continue no longer than the duration of the authority that awards it; and which necessarily terminates (if no shorter period be limited) with the adjournment or dissolution of the Congress.

98. Attempts to bribe or intimidate members of the Legislature, are, moreover, offences against the Public, and subject the offender to the usual course of prosecution in a court of law. But this liability does not exclude the jurisdiction of the Legislative body, nor does the interference of the latter, in vindication of its character and safety, preclude the Judicial power from taking cognizance of the same act, as a violation of the general Law.

99. The Legislative powers of the two Houses of

Congress extend to all subjects of a national character, and will be particularly enumerated and considered in examining the powers vested in the general Government at large. There are, however, some constitutional powers which are peculiar to each branch of the national Legislature.

100. The House of Representatives possesses the sole power of impeachment, or of presenting accusations to the Senate against the public officers of the United States, for misconduct in their offices: and it has also the exclusive right of originating all *bills* for raising revenue; but the Senate may propose amendments as to other bills.

101. Every bill which may indirectly or consequentially raise or increase revenue, or every *money-bill*, in the sense of the English law, is not considered a *revenue-bill*, within the meaning of the Federal Constitution; and in the practical construction of this power, it has accordingly been confined to bills for levying taxes, in the strict sense of the term, and has not been extended to bills for other purposes which may incidentally create revenues.

102. The Senate has the sole power of trying impeachments; and in its exclusive connexion with the Executive power, it possesses a negative voice in the appointment of all officers, whose appointments are not otherwise provided for in the Constitution.

103. The advice and consent of two-thirds of the Senators present are requisite to the ratification of treaties, which must be submitted to the exclusive consideration of the Senate.

104. Treaties with foreign powers, if made abroad, are negotiated on the part of the United States, by

ministers accredited to those powers, under the instructions of the President; and if made in the United States, they are negotiated between the Secretary of State, under the like instructions, and ministers accredited from foreign Governments.

105. The Senate is not consulted in the first instance, but when the terms of the treaty are agreed upon by the agents or plenipotentiaries employed for that purpose, the President (unless he altogether disapprove it), submits it to the Senate, in whose deliberations he does not participate, but renders them from time to time such information relative to it as they may require.

106. The Senate may wholly reject a treaty, or they may ratify it in part, or recommend additional or explanatory articles; which, if the President approve, become the subject of further negotiation with the foreign power; and when the whole is agreed to, on the other part, and receives the sanction of the Senate, the ratifications are exchanged between the respective Governments, and the treaty becomes obligatory upon both nations.

107. From the reason and exigency of the case, the proceedings of the Senate, on these occasions, are always conducted with closed doors; and the contents of the treaty, and all information connected with it, are, from motives of delicacy and policy, kept secret until the termination of the business renders such reserve no longer necessary.

108. The subjects remaining for consideration under the present general head, are,

III. *The method of enacting Laws by the two Houses of Congress; and the times and modes of their assembling and adjourning.*

109. The rules of proceeding in each House are substantially the same; and are such as are essential to the transaction of business with order and safety.

110. The House of Representatives chooses its *Speaker*, or presiding officer, from amongst its own members; and it also chooses its other officers.

111. The Vice President of the United States is *ex officio* President of the Senate; but has no vote therein, unless the Senators be equally divided.

112. The Senate chooses its other officers; and also a President *pro tempore*, from its own body, in the absence of the Vice President, or when he executes the office of President of the United States.

113. The proceedings and debates in both Houses are conducted in public, except upon very special occasions, and in the transaction of Executive business by the Senate.

114. *Bills*, or the original drafts or projects of laws, are introduced into both Houses respectively, either upon the order of the House on the reports of *standing*, or *select* Committees, or upon leave granted to an individual member on motion, after due notice of his intention to move the House to grant it.

115. Standing Committees are appointed for the session upon all the usual subjects of ordinary legislation, and upon the general matters incident to the proceedings of each House respectively.

116. Select Committees are appointed from time to time upon special subjects as they arise, and their powers cease upon the performance of the temporary duties assigned to them.

117. Both standing and select Committees are appointed in the House of Representatives on the nomination of the Speaker, and in the Senate most generally by ballot, but sometimes, and in some cases, on the nomination of the President of the Senate.

118. Bills are introduced by standing Committees upon the order of the House upon subjects embraced within the general objects of their appointment, either accompanied by a report upon those general objects, or upon a particular subject, relative thereto, or specially referred to them; or upon the mere motion of the Chairman, or any other member of the Committee under its direction, without previous notice.

119. Bills are in like manner introduced by select Committees, upon the order of the House on a report relative to the special matter referred to them, or upon motion, without previous notice, for leave to report by bill.

120. Every bill must receive three readings before it can be passed by either House; and these several readings must be on different days, unless upon a special order made by the unanimous consent of the House, to the contrary.

121. No bill can be committed or amended in either House, until it has been read twice; and upon the second reading of the bill, it is declared to be ready for commitment or engrossment; if committed, it is committed either to a standing, or a select Committee, or to a Committee of the whole House; or if the bill, instead of being committed, be ordered to be engrossed, the House then appoints the day on which it shall be read the third time.

122. If a bill be committed to a Committee of the whole, the House determines on what day the Committee shall consider it; and when the House resolves itself into such Committee, the Speaker leaves the chair, after appointing another member to preside as chairman of the Committee; and the Speaker may take part in the debates of the Committee as an ordinary member.

123. In the Senate, the Committee of the whole is called a *quasi* Committee, because the President of the Senate acts as chairman of the Committee.

124. Important bills are generally referred to a Committee of the whole House; and every motion or proposition for a tax or charge upon the People, or for a variation in the sum or *quantum* of a tax or duty, and for an appropriation of money, is required first to be discussed in a Committee of the whole.

125. The object of referring any matter to a Committee of the whole, is to allow greater latitude and freedom in discussing its merits, and settling the details, than is generally allowed by the rules of either House when the proceeding is in the House itself.

126. After commitment and report to the House, and at any time before its passage, a bill may be recommitted at the pleasure of the House: and when a bill, either upon a report of a Committee, or after full discussion and amendment in the House, stands for the next stage of its progress, the question is, whether it shall be engrossed and read a third time; and this is the proper time for those who are opposed to the principle of the bill, to take their stand against it as it is now supposed to be as perfect, or as little exceptionable, as it can be made.

127. When a bill has been engrossed for a third reading, and, upon being read the third time, has passed one House, it is transmitted for concurrence to the other, in which it is subjected to similar forms of examination and discussion.

128. If it be altered or amended, or agreed to without amendment, or totally rejected, in the House to which it has been transmitted for concurrence, it is, in either case, returned to the House in which it originated, with a message communicating the result.

129. If amendments are made in one House which are not agreed to in the other, a message to that effect is sent to the former, which may either *recede from*, or *insist on*, its amendments; and if the two Houses cannot agree, they appoint Committees of conference, and upon receiving their report, either House may *recede* from its amendment, or from its vote of concurrence therein, or accept a compromise suggested by the Committee; or it may *adhere* to its former vote of disagreement; in which last case the bill falls to the ground.

130. These checks and formalities, which are intended to guard against surprise or imposition, were originally borrowed, although much contracted and simplified, from the proceedings of the British Parliament; and they prevailed substantially in the Colonial Assemblies, from which they were immediately adopted by the State Legislatures, and from them, by each house of Congress.

131. When a bill, or any other vote or resolution, to which the concurrence of both Houses is necessary, (except the question on the adjournment of the Congress), is passed by both branches of the Legislature, it is required by the Constitution to be pre-

sented to the President of the United States for his approval.

132. If he approve of the bill or resolution, he signs it; but if not, he must return it, with his objections, to the House in which it originated, which must enter the objections at large on its journal, and proceed to reconsider it.

133. If, after such reconsideration, two thirds of that House agree to pass the bill or resolution, it must be sent, together with the objections, to the other House, by which it must likewise be reconsidered; and if approved by two thirds of that House also, it becomes a Law, notwithstanding the objections of the President.

134. In all such cases, the votes of both Houses must be determined by *yeas* and *nays*, or openly ascertained; and the names of the persons voting for, or against the bill or resolution, must be entered on the journal of each House respectively.

135. If a bill is not returned by the President within ten days (Sundays excepted) after it is presented to him, it becomes a Law, in like manner as if he had signed it, unless Congress, by their adjournment, prevent its return.

136. Congress must assemble at least once in every year for the despatch of the public business, and such meeting is fixed by the Constitution for the first Monday in December, unless Congress shall by Law appoint a different day.

137. Until the day fixed by the Constitution or appointed by Law, the action of Congress cannot commence, unless the President, in the exercise of

his Constitutional power, sooner convene it, on some extraordinary occasion.

138. Congress, by a concurrent resolution, to which the assent of the President is not required, fixes the times of its own adjournments within the period of its dissolution; but during a session, neither House can adjourn for more than three days without the assent of the other; nor can they agree to adjourn to any other place than that in which they shall be sitting. And in cases of disagreement between the two Houses, as to the time of their adjournment, the President may adjourn them to such time as he may think proper.

139. But as the term for which the House of Representatives and one third of the Senate are elected, expires at the end of every second year, Congress must of necessity adjourn at the expiration of that period; as *the Congress*, for the time being, is in fact dissolved by the operation of the Constitution and Laws, on the third day of March in every alternate year.

## CHAPTER II.

### OF THE EXECUTIVE POWER.

140. The object of this department is the *execution of the Laws*; and good policy requires that it should be organized in the mode best calculated to effect that end with fidelity and precision.

141. No discretion is vested in the Executive Magistrate in regard to the wisdom and expediency of the Laws after they are duly made and promulgated.

It is his duty then to execute them, whatever may be his opinion as to their justice or policy.

142. What has once been declared under the forms prescribed by the Constitution to be the meaning and intention of the Legislature, must be carried into prompt execution, and due effect continued to be given to it by the Executive department, until repealed by the Legislature, or pronounced by the Judicial department to be repugnant to the Constitution.

143. Every individual is bound to obey a Constitutional Law, however objectional in other respects it may appear to him; and whosoever refuses obedience to a Law on the ground of its unconstitutionality, does so at his peril, and is liable to the legal consequence of disobedience, if the Law be judicially declared to be warranted by the Constitution.

144. The legal presumption is always in favour of an act passed by the Legislature according to the forms of the Constitution; and where the Chief Executive Magistrate possesses a negative upon those acts, the presumption is stronger against him than against an inferior officer, or a private person.

145. As the Executive power is not only bound to obey, but to execute, the Law, the essential qualities required in this department are *promptness*, *vigour*, and *responsibility*.

146. A *prompt* submission to the Law, and a *prompt* preparation to enforce it, are requisite both in respect to the authority from which it emanates, and in order to give it due operation and effect, which should be immediate and decisive.

147. The Executive power must also be endowed

with *energy* in other respects; for feebleness in this department implies feebleness in the Government; and the *vigour* of action imparted to the Executive power, must be duly proportioned to the exigencies which may arise under the system.

148. The power vested in this department should, however, be proportioned as exactly as possible to the occasions which may be expected to require its exercise; for if it fall short of them, the public sense of the protection and control of the Government will be weakened, and violations of the Law escape with impunity; and if the *quantum* of power exceed the exigency of the case, the liberties of the People will be in jeopardy.

149. In a written Constitution, it is difficult to adopt general expressions precisely descriptive of the proper extent and limitation of this power; but to guard against its abuse, as well as to insure the faithful execution of the general trusts confided to this department, the Chief Executive Magistrate should be held *responsible* to the People for official misconduct.

150. These three qualities of promptness, vigour, and responsibility, are most likely to exist in union with each other where the chief Executive authority is limited to a single person.

151. *Unity* is conducive to energy, which includes both promptness and vigour, as well as decision, activity, secrecy, and despatch; all of which will generally characterise the proceedings of one man in a much more eminent degree than the proceedings of a greater number; and in proportion as the number is increased, those qualities will be diminished.

152. This unity in the Executive department may

be destroyed, either by vesting the power in two or more Magistrates of equal dignity; or by vesting it ostensibly in one, subject, in whole or in part, to the control and advice of a council; both of which methods are liable to similar, if not to equal, objections.

153. History and experience confirm the theoretical reasoning which renders it obvious that a division of the Executive power in any form, between two or more persons, must always tend to produce dissentions and fluctuating measures, and diminish the respectability, as well as the authority and efficiency of the Government.

154. The division of the Executive power has also a direct tendency to destroy *responsibility*; for there will always be much less temptation to depart from duty, and much greater solicitude for character, where there are no partners to share the odium of bad measures, or to communicate by their example, confidence in the perpetration of abuses, from the greater probability of escaping punishment.

155. *Plurality* in the Executive department, besides depriving the People of these great securities for the faithful exercise of delegated power, tends to depress the character of the nation abroad; whilst *unity* in that branch of the Government not only affords greater security at home, but increases that efficacy which is requisite to command the respect of foreign nations.

156. In accordance with these principles, the Executive power is vested by the Constitution in a single Chief Magistrate, under the name of "THE PRESIDENT OF THE UNITED STATES;" and, in the examination of the functions of this high officer,

I. *The qualifications* required by the Constitu-

tion for the office of President, *the mode and duration of his appointment*, and *the provision for his support*, are first to be considered.

157. No person is eligible to the office of President, except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, and who shall not have attained the age of thirty-five years, and been fourteen years resident within the United States.

158. To avoid the dangers and difficulties to be apprehended, under the most favourable circumstances, from the popular election of a Supreme Executive Magistrate for a whole nation, the Constitution does not refer the election of the President directly to the People; but confides the power to a small body of electors, representing for that purpose the People at large, and appointed in each State under the direction of the Legislature.

159. Each State appoints, in such manner as its Legislature may direct, a number of electors, equal to the whole number of Senators and Representatives, which it may be entitled to send to Congress.

160. To prevent the person in office at the time of the election from having an improper influence in procuring his re-election, it is provided that no Senator or Representative in Congress, nor any person holding an office of trust or profit under the United States, shall be an elector. But in no other respect does the Constitution define the qualifications of the electors.

161. In some few of the States the electors are appointed by the Legislature itself, in a mode pre-

scribed by Law; but in a great majority of States, the choice of electors is, in accordance with the clear sense and expression of public opinion, as well as with the spirit of the Constitution, referred to the People at large.

162. Congress may determine the time of choosing the electors; and has prescribed by Law that they shall be chosen within thirty-four days previous to the election of the President.

163. Congress has also a discretionary power to appoint the day on which the electors shall give their votes, which must be the same day throughout the Union; and is, in like manner, fixed for the first Wednesday in December in every fourth year succeeding the last election. But the place for the meeting of the electors is left to the discretion of the State Legislatures, and is usually the seat of the State Government.

164. The electors, when assembled on the day appointed, within their respective States, and duly organized by the appointment of a Chairman and Secretary from amongst themselves, and by the votes of those present, filling up vacancies occurring from death or absence, proceed to vote by ballot for two persons, one of whom, at least, must not be an inhabitant of the same State with themselves.

165. According to the original Constitution, the electors were not to designate, by their ballots, which of the two persons voted for, was intended as President, and which as Vice President; which last officer was nevertheless to be elected at the same time, in the same manner, and for the same term, as the President; but it merely provided that the person having the greatest number of aggregate votes should be

President, if such number were a majority of the whole number of electors; and that the person having the next greatest number, if constituting such majority, should be Vice President.

166. But a subsequent amendment of the Constitution requires the electors to name, in distinct ballots, the persons voted for as President and Vice President; and declares that the person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed; and that the person having the greatest number of votes for Vice President, if constituting such majority, shall be Vice President.

167. The electors in the several States are then to make distinct lists of all persons voted for as President, and of all voted for as Vice President; and of the number of votes given for each respectively; which lists they are required by Law to sign and certify, and transmit sealed to the seat of Government of the United States.

168. The Act of Congress also directs the certificates of the votes to be delivered before the first Wednesday in January next ensuing the election, to the President of the Senate, who, before the second Wednesday in February thereafter, in the presence of both Houses of Congress, opens all the certificates; when the votes are counted, and the result declared.

169. The Constitution does not declare by whom the votes are to be counted and the result declared; but the practice has been for the President of the Senate to perform those duties; the two Houses of Congress being present to witness the proceedings, and to be prepared to act in case no choice be made by the electors.

170. The person having the requisite number of votes for President, is declared to be elected to that office. But if no person have such number, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives are immediately by ballot to choose the President.

171. In thus choosing the President, the votes are taken by States; the representation from each State having one vote. A *quorum* for this purpose consists of a member or members from two-thirds of the States, and a majority of all the States is necessary to a choice.

172. Although the Constitution directs the choice in this case to be made *immediately* by the House of Representatives, yet the amendment expressly declares their choice to be valid if made before the fourth day of March following the day on which the electoral votes are counted and the result declared.

173. In case no choice of President be made by the House of Representives, within the period limited for that purpose, the Vice President acts as President, as in the case of the death, or constitutional disability of the President.

174. The person found to have the requisite number of votes, upon the counting of the same in the presence of both Houses of Congress, is declared to be Vice President; but if no person have such number, then from the two highest numbers on the list, the Senate choose the Vice President: a *quorum* for that purpose consists of two-thirds of the whole number of Senators, and a majority of the whole is necessary to a choice. But no person constitutionally ineligible to the office of President, is eligible to that of Vice President.

175. The Constitution, as amended, does not prescribe the time and place, when and where the Senate is to choose the Vice President in case no choice be made by the electors; but from analogy to the provision and practice in regard to the President, it is presumed that the Senate may elect by themselves at their ordinary place of meeting, and at any time previous to the ensuing fourth of March.

176. Congress has by Law provided that the term of four years, for which the President and Vice President are elected, shall commence on the fourth day of March next succeeding the day on which the votes of the electors are given; and the amendment of the Constitution adopts the same day as the limitation of the period within which the House of Representatives, in case of no choice by the electors, are to elect the President.

177. The effect, therefore, of this amendment, is to render the provisions of the Act of Congress relative to the times appointed for the several duties enjoined by the Constitution, and the amendment in regard to the election of President and Vice President, as fundamental and permanent as the Constitution itself.

178. The appointment of an extraordinary person as Vice President of the United States, and *ex officio* President of the Senate, is recommended principally by two considerations: the first is, that to secure at all times a definite resolution of the Senate, it is necessary that the President of that body should have a casting vote; and to take a Senator from his seat as such, and place him in that of the presiding officer, would, in regard to the State he represents, be to exchange a *constant*, for a *contingent*, vote.

179. The other consideration is, that as the Vice President may occasionally become a substitute for the President in the supreme executive office, all the reasons which recommend the mode of election prescribed in the first instance for the one, apply with great, if not with equal force, to the other.

180. The powers and duties of the President devolve on the Vice President, not only when no choice is made of a President either by the electors or the House of Representatives, but also in case of the removal of the President from office, or of his death, resignation, or inability to discharge his duties; and Congress are authorized to provide by Law for the case of a vacancy in both offices.

181. In pursuance of this power, Congress has declared, that in the event of such vacancies, the President of the Senate *pro tempore*, and, in case there should be no President of the Senate, the Speaker of the House of Representatives, should act as President of the United States until the vacancy should be supplied.

182. The evidence of a refusal to accept, or of a resignation of the office of President or Vice President, is declared by the same law to be a declaration in writing filed in the office of the Secretary of State.

183. As it may become a question who would be the person to succeed if the office of President should devolve on the Speaker, after the Congress for which he was chosen has expired, it is usual for the Vice President to withdraw from the Senate previously to the adjournment of the session, in order to afford an opportunity to that body to choose a President *pro tempore*.

184. But if the President *pro tempore* of the Senate should die, during a casual vacancy in the offices of President and Vice President, the Speaker of the House of Representatives then extinct, would probably be deemed the person upon whom the office was intended to devolve.

185. If the Vice President succeed to the office of President, he continues in it until the expiration of the term for which the President was elected, unless a temporary disability of the President be sooner removed; and if both offices be vacant, it is by law made the duty of the Secretary of State to take measures for the election of a *President*. But, from a defect in the amendment, a *Vice President*, as the Constitution now stands, cannot be elected until the regular period.

186. The term of four years, for which the President and Vice President are elected, was intended to be long enough to render the Executive Magistrate firm and independent in the discharge of his trust, and to give stability to his system of administration; and short enough to retain him under a due sense of his dependence on public approbation.

187. A practice which has prevailed from the commencement of the Government, for the President to decline a second re-election, seems now to be permanently established, and to have acquired the force of a legal precedent; and it has, in effect, limited the period of service to eight years, subject to an intermediate re-election.

188. The support of the President is secured by a provision of the Constitution, which declares that he shall at stated times receive for his services a compensation, which shall neither be increased nor

diminished during the period for which he shall have been elected.

189. This provision was obviously intended to strengthen and preserve the proper independence and energy of the Executive department; but the President cannot receive any other emolument from the United States, or from any of the States.

190. In pursuing the examination of the Executive department,

II. *The powers and duties of the President*, are next to be considered.

191. The first power vested in the President, connects him with the Legislature in the exercise, to a certain extent, of Legislative powers, as a security for his own independence, and a check upon that most powerful branch of the Government; and it consists in the qualified negative he possesses upon the acts of Congress.

192. Every act, order, resolution, or vote, to which the concurrence of the two houses of Congress is necessary, (except on the question of their adjournment,) must be presented to the President, and must be approved by him before it can take effect, unless, after being disapproved by him, it be again passed by two thirds of both Houses.

193. Without this power the Executive department would be unable to sustain itself against the propensity of the Legislature to encroach upon the rights, and absorb the powers, of the weaker branches of the Government.

194. The President might gradually be stripped of his authority by successive concurrent resolutions

of the Senate and House of Representatives, or so weakened as to be ultimately annihilated by a single vote of the more popular branch of the Legislature, unless he possessed this check, as a means of preventing the Legislative and Executive powers, from being united in the same hands.

195. This power, not only serves as a defence to the Executive authority, but furnishes an additional safeguard against the enactment of improper Laws, and secures the community against the effects of precipitancy, or of any impulse or excitement hostile to the public welfare, that may happen temporarily to influence a majority of the Congress.

196. The President is constituted Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual service of the Union.

197. The command and disposal of the public force to execute the Laws, maintain domestic tranquillity, and resist foreign oppression, are powers obviously of an Executive nature; and particularly require the exercise of the qualities characteristic of this department; and they have uniformly been appropriated to it, in every well organized Government.

198. The President has the sole power of granting reprieves and pardons for offences against the United States, except in cases of impeachment; the necessity of which authority in every Government, arises from the infirmities incident to the administration of human justice.

199. But were that administration perfect, policy would sometimes require the remission of a punishment strictly due, for a crime clearly ascertained;

and both humanity and policy dictate that this power should be as unrestricted as possible; and hence the expediency of vesting it in the President alone.

200. The President has power, by and with the advice and consent of the Senate, to make *Treaties*, provided two thirds of the Senators present concur.

201. As Treaties are declared by the Constitution to be a part of the supreme Law of the land, as by their means new relations are formed, and obligations contracted with foreign powers, it would seem most consonant with the principles of a Republican Government, that the right of making Treaties should be vested in the Legislative department.

202. But the preliminary negotiations which are required, and the secrecy and despatch proper to take due advantage of a sudden and favourable turn in public affairs, render it more expedient that this power should be confided to the Executive.

203. Although the power of making treaties partakes more of the Legislative than of the Executive character, yet it does not fall strictly within the definition of either. It relates neither to the enacting of new Laws, nor to the execution of those which exist. Its objects are *contracts*, which have, indeed, the force of Law, but derive that force from the obligations of good faith amongst nations.

204. Treaties are not rules of action prescribed by the Supreme Legislative power, to the citizens of the State; but agreements between sovereign and independent States.

205. The power in question accordingly constitutes a distinct department in the Government of the

United States; formed from the association of one branch of the Legislature with the Executive power, and for this purpose, the Constitution invests the Senate with the attributes of an Executive Council.

206. The qualities requisite in the management of national intercourse, indicate the President as the most fit organ of communication with foreign powers, and the efficient agent in the conclusion of treaties; whilst the importance of the trust, and the operation of Treaties as Laws, strongly recommend that they should be made under the advice and control of a portion of the Legislative power.

207. The Senate was selected for this purpose, not only because the deposit of the power in that body, imparts additional weight and security to it as the weaker branch of the Legislature, but because, from its smaller number, it may be more easily assembled, and from its greater permanence, it is presumed to be governed by steadier and more systematic views of public policy, than the House of Representatives; whilst these causes combined, would enable it to act with promptitude and vigour.

208. The President is further invested with the power to nominate, and by and with the advice and consent of the Senate to appoint, Ambassadors, other public Ministers and Consuls, the Judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for, and which may be established by Law. But Congress may vest the appointment of such inferior officers as they may think proper, in the President alone, in the Courts of Law, or in the heads of departments.

209. The exercise of such a power by the People

at large would be impracticable; and a concurrent right of nomination in the two Houses of Congress, or between the President or any other select body of men, would afford greater temptation and opportunity to intrigue, favouritism, and corruption, and release the appointing power from all real responsibility.

210. The power of selecting the heads of the departments established to aid the President in the discharge of his Executive duties,—of nominating agents to whom the immediate conduct and management of international affairs and the negotiation of treaties are confided; and of those officers to whom the administration of justice is committed, is, with peculiar propriety, vested in the Chief Magistrate, who is held responsible for those acts of his immediate assistants and confidential advisers, which receive his sanction; who is charged with the superintendence of foreign relations, and who is bound to see both Treaties and the Laws faithfully executed.

211. The association of the Senate with the President, in the exercise of this power, is an exception to the general delegation of Executive authority, which can never be attended with a mischievous effect, but must at all times operate as a salutary check upon the misinformation or errors of the President; whilst it serves further to increase the weight of the Senate, as a counterpoise to the other more numerous and popular branch of the Legislature.

212. To prevent the inconvenience which would arise from occasional vacancies in office, when the Senate is not in session, the President has power to fill up all vacancies which may happen during its recess; by granting commissions which expire at the end of the next session of Congress.

213. The "vacancies" in question are understood to be such as occur from death, resignation, promotion, or removal; and the Constitutional authority of the President, has been held by the Senate not to extend to appointing and commissioning during the recess of the Senate, Ambassadors or Ministers to foreign nations, where no such appointments had before been made.

214. The word "happen" has also been held by the Senate, to bear relation to some casualty not provided for by Law. If, therefore, the Senate are in session when new offices are created by Law, and nominations are not then made to them by the President, he cannot appoint to such offices during the recess, as the vacancy does not then *happen*.

215. When a commission has been signed by the President, the appointment is final and complete; and the officer has then conferred on him legal rights which cannot be resumed. Until then, the discretion of the President, as to the appointment, may be exercised; but from that moment, the latter is irrevocable; and the power of the President over the office is then terminated, in all cases where by Law the officer is not removable by him.

216. The Constitution mentions no power of *removal*, by the Executive department, of any of the officers of the United States. But as the tenure of office of none, except those in the Judicial department, is declared to be *during good behaviour*, it follows that all others must hold their offices *during pleasure;* unless in cases where Congress has provided for some other duration of office.

217. So far as Congress constitutionally possesses the power to regulate and delegate the appointment

of " inferior officers;" so far, it may prescribe the term of office, and the manner in which, and the persons by whom the removal, as well as the appointment, shall be made.

218. In the absence of all legislation upon the subject, it is settled that the power of removal is implicitly vested in the President, without any control or co-operation on the part of the Senate; and, in regard to appointments confided to him by the Constitution, it seems also to be settled, that Congress can give no duration of office which is not subject to the President's power of removal; as all its legislation hitherto in such cases, recognizes the Executive power of removal.

219. The President may, on extraordinary occasions, convene both Houses of Congress, or either of them; and in case of disagreement between them, with respect to the time of their adjournment, he may adjourn them to such time as he may think proper.

220. He may require the opinion, in writing, of the principal officers in each of the Executive departments, upon any subject relating to the duties of their respective offices. But he does not possess a like authority with regard to the Judicial department.

221. It is the duty of the President to receive Ambassadors and other public ministers from abroad; and, as incident to this duty, he is undertsood to possess authority to refuse to receive or acknowledge them; and to dismiss those who, after having been received, become obnoxious to censure, or unfit to be allowed their privileges, by reason of their improper conduct, or from political events.

222. The remaining duties of the President consist in giving information from time to time to Congress,

of the state of the Union, and recommending to their consideration such measures as he shall judge necessary or expedient. He is moreover required to commission all officers of the United States, and generally and comprehensively "*to take care that the Laws be faithfully executed.*"

223. The incidental powers belonging to the Executive department, are necessarily implied from the nature of the duties confided to it; and amongst them is included the power to perform the duties specifically entrusted to that branch of the Government, without obstruction or impediment.

224. The President, therefore, is not liable to arrest, imprisonment, or detention, whilst in the discharge of his office; and for this purpose, his person is deemed, in civil cases at least, to possess an official inviolability.

225. In the exercise of his political power, as distinguished from his ministerial duties in the execution of the Laws, he is to use his own discretion, and is amenable only to his country and his own conscience. His decision in relation to these powers is subject to no direct control; and his discretion, when exercised, is conclusive. But he has no authority to control other officers of the Government, with respect to duties imposed on them by Law, in cases not within his political power.

226. Before he enters on the execution of his office, he is required by the Constitution to take an oath or affirmation, that he will "faithfully execute the office of President of the United States, and to the best of his ability, preserve, protect, and defend the Constitution of the United States."

227. But, in addition to all the precautions to prevent abuses of the Executive trust, manifest in the mode of his appointment, the limitation of his term of service, the restrictions imposed on the exercise of his powers, and the solemn oath required to be taken by him, the Constitution renders him amenable to justice for mal-administration in his office; and he may be impeached for treason, bribery, and other high crimes and misdemeanors, and, on conviction, be removed from office.

228. To aid the President in the discharge of the several branches of his Executive functions, the Constitution contemplates and recognizes certain subordinate departments, with their respective heads; which have accordingly been defined and established by Law.

229. The first of these auxiliary branches of the Executive power, is "the Department of State," and the principal officer therein is denominated "the Secretary of State," who performs such duties as from time to time are committed to him by the President, relative to foreign intercourse and public ministers and consuls, or to negotiations with foreign powers, or to memorials or other applications from foreign ministers or other foreigners, or to such other matters as the President shall assign to his department.

230. The Secretary of State conducts the business of his office in such manner as the President from time to time directs; keeps the Seal of the United States, and makes out records, and seals all civil commissions to officers of the United States, who are appointed by the President, by and with the advice and consent of the Senate, or by the President alone.

231. The next subordinate and auxiliary department, is the "Treasury Department;" the principal officer or head of which is styled "The Secretary of the Treasury;" whose duties relate to the superintendence of the finances, the support of the credit, the collection and management of the revenue, and the regulation of the expenditure and accounts of the United States.

232. "The Secretary of the Treasury" is required by Law, to prepare and lay before Congress at the commencement of every session, a report on the finances, containing estimates of the public revenues and expenditures, and plans for improving the public resources; and to report and give information to either branch of the Legislature, in person or in writing as he may be required, respecting all matters referred to him, or which appertain to his office; and generally to perform all such services relative to the public finances as he shall be directed.

233. The next subordinate branch of the Executive department, is "The Department of War;" the head of which is denominated "The Secretary for the Department of War," and executes such duties as are entrusted to him by the President, relative to military commissions, or to the land forces or warlike stores of the United States, or to such other matters respecting military affairs, and the granting of lands for military services, or relative to "Indian affairs," as are assigned to his department.

234. The last branch of the Executive department, established as auxiliary to the President, is "The Department of the Navy;" the chief officer of which is styled "the Secretary of the Navy;" whose duty it is to execute such orders as he receives from the President, relative to the procurement of naval stores

and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment of the United States.

235. In case of a vacancy in any of these Executive offices, the President may authorize any person at his discretion, to perform the duties of head of the department, until a successor be appointed, or such vacancy be filled.

## CHAPTER III.

### OF THE JUDICIAL POWER.

236. The Judicial Power, is that branch of the Government to which the administration of justice, and the interpretation of the Constitution and Laws is entrusted; and no Government can be complete in its form, nor perfect in its principles, without such a distinct and independent department.

237. A Constitution which omitted to establish an adequate Judicial Power, could not be successfully carried into effect; and if, instead of being separated and rendered independent, that Power were blended with one or both of the other departments, or if the officers charged with its administration were dependent on either of the former, the dignity, efficiency, and utility of this department would be destroyed.

238. The Judicial and the Executive departments are mutually auxiliary, and the former partakes, in a measure, of the nature of the latter. It also participates, in some degree, in the Legislative Power, as the Judicial construction of Legislative acts is received as binding and conclusive.

239. To make Laws, and to execute them, are the respective objects of the Legislative and Executive departments, and are, indeed, the two principal operations of Government; but Laws cannot be correctly and fully executed, without a power in the Constitution to expound and apply them.

240. Under a written Constitution, founded upon the principle of representation, and establishing a just division of the three branches of Government, the Judicial department exercises, moreover, the higher function, of expounding the Constitution, and thereby testing the validity of the acts of the Legislature; and hence the greater necessity of securing, by fundamental provisions, the independence of the Judiciary.

241. The Judicial Power in every Government must be co-extensive with the power of legislation; and if by express terms it should be restricted to a part only of the subjects of legislation, the whole system would, in that proportion, be impaired in efficiency and value. But the authority of the Judiciary cannot be made to exceed the Legislative power, as such excess would be inconsistent with its nature.

242. The Constitution of the United States recognizes a Judicial Power, not as an adjunct to the Executive, but as a necessary and substantive part of the Government; and this was the more requisite, from the extraordinary complications, unavoidably resulting from the nature of the Union, of the authority of the United States, with that of the several States.

243. The Judicial Power of the United States is accordingly vested "in one Supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish."

244. A Chief Justice, and other Judges are contemplated by the Constitution; but the complete organization of the Supreme Court, as well as of the tribunals inferior and subordinate to it, is provided for by Law.

245. In reviewing the organization of the Judicial Power under the Constitution and Laws of the United States, it will be proper to consider: *First*, The mode in which this department is constituted; *Secondly*, The objects and extent of its jurisdiction; and, *Thirdly*, The manner in which that jurisdiction is distributed amongst the several Courts.

I. *As to the mode in which this department is constituted.*

246. The mode of appointment, by the President and Senate, as prescribed by the Constitution, is not only generally advantageous, but peculiarly proper, in regard to Judicial officers.

247. The just and vigorous investigation and punishment of every species of fraud and violence, and the exercise of the power of compelling every man to the punctual performance of his contracts, are duties which, although the faithful discharge of them will command the calm approbation and respect of the candid and judicious portion of the community, are not in their nature of the most popular character; and the fittest men would seldom be selected to fulfil them, by any more open and general mode of appointment.

248. The same considerations recommend the peculiar tenure by which Judicial magistrates hold their offices; which is, in effect, for life, if not sooner removed on impeachment and conviction for official delinquency; and it is esteemed one of the most va-

luable of modern improvements in the practice of Government.

249. The Judges, both of the Supreme Court, and of the inferior Courts of the United States, accordingly hold their offices, *during good behaviour;* which is deemed sufficient as a defence against the encroachments of the Legislative and Executive Powers, and the best expedient that can be devised to secure a steady, upright, and impartial administration of justice.

250. The Judiciary department, from the nature of its functions, must always be the weakest of the three great departments of power; and although individual oppression may sometimes proceed from Courts of justice, yet the liberties of the People can never be endangered, so long as the Judicial Power remains distinct from both the Legislative, and the Executive departments; and nothing can contribute so much to the firmness and independence of the Judiciary, as permanency in office.

251. In addition to the tenure by which the Judges hold their offices, the permanent provision for their support is calculated to secure their independence. The Constitution accordingly declares, that they "shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

252. This provision is considered an improvement on all former Constitutions; and tends to secure a succession of learned men as Judges, who, in consequence of a certain undiminished support, are induced to relinquish the lucrative pursuit of their professional practice, for the duties of an important and honourable station in the Government.

253. The perfect independence of the Judges is peculiarly requisite in a Constitution, containing, like that of the United States, certain specified restrictions upon the Legislative authority, both of the general and State Governments; which can only be preserved in practice through the instrumentality of the Courts.

254. But whilst the Constitution secures the independence of the Judges, it renders them amenable for any corrupt violation of their trust; and, on impeachment and conviction, they may be removed from office, and disqualified for the future from holding any office whatever under the Government of the United States.

255. The Judicial power being established on principles essential to maintain its independence, and to secure a vigorous administration of the Law, the Constitution next designates,

II. The objects of its jurisdiction.

256. The Judicial power of the United States extends,

1. To all cases *arising under the Constitution*; because the meaning, construction, and operation of a compact, ought always to be ascertained by an authority derived from all the parties, and not by an authority derived from any one of them.
2. To all cases *arising under the Laws of the United States*; because, as such Laws constitutionally made, are obligatory on each State, the measure of obligation and obedience ought not to be decided and fixed by the party from whom they are due, but by a tribunal deriving authority from both parties.

3. To all cases arising under Treaties *made by the authority of the Union;* because, as Treaties are compacts made by, and obligatory on, the whole nation, their operation ought not to be regulated or affected by the local Laws or Courts of a part of the nation.
4. To all cases *affecting Ambassadors, other public Ministers, and Consuls;* because, as these are officers of foreign nations, whom this nation is bound to protect, and treat according to the Law of Nations, cases affecting them ought only to be cognizable by national authority.
5. To all cases *of Admiralty and Maritime jurisdiction;* because, as the sea is the joint property of all Nations, whose rights and privileges relative to it, are regulated by the Law of Nations and Treaties, such cases necessarily belong to national jurisdiction.
6. To *all* controversies, *to which the United States shall be a party;* because, in cases in which the whole People are interested, it would not be equal or wise, to permit any one State to decide and measure out the justice due to others.
7. To *controversies between two or more States;* because domestic tranquillity requires that the contentions of States should be peaceably terminated by a common judicatory; and justice ought not to depend on the *will* of either of the litigants.
8. To controversies *between a State when plaintiff, and citizens of another State;* because, in such a case, it is better that a State should prosecute its demands in a national court, than in its own courts, or in the courts of the State to which those citizens belong; the danger of irritations arising

from apprehensions or suspicions of partiality being thus avoided.

9. To controversies *between citizens of different States;* because the immediate fellow-citizens of neither of the parties should be the sole judges in such cases; and the free and equal citizens of the General Government should have free and equal justice in tribunals common to them all.

10. To controversies between *citizens of the same State, claiming lands under grants of different States;* because, as the rights of the two States to grant the land are drawn in question, neither of them ought to decide the controversy.

11. To controversies *between a State when plaintiff, or between the citizens thereof, and foreign States, Citizens, or Subjects;* because, as every nation is responsible for the conduct of its citizens towards other nations, all questions touching the justice due to foreign States or People, should be ascertained by, and depend on, national authority.

257. The propriety of vesting these powers in the Judiciary department of the United States, seems to result, as a necessary consequence, from their union as one nation; and the exercise of jurisdistion in all these cases, by the national tribunals, may be considered requisite to the existence of the national Government.

258. By "cases" in this article of the Constitution, are understood criminal, as well as civil cases; and the fitness of extending the Judicial power to all cases of both descriptions, arising under *the Constitution*, in contradistinction to those arising under *Laws* passed in virtue of its authority, depends on the obvious

necessity of giving efficacy to those constitutional provisions which neither require nor admit of an Act of the national Legislature to sanction and enforce them.

259. The individual States are prohibited by the Federal Constitution, from the performance of certain acts, some of which are incompatible with the interests and objects of the Union, and others with the principles of good Government; but such prohibitions would be ineffectual without some power in the General Government, to restrain or correct their violation.

260. From the nature of the case, this power must have been either the authority actually vested in the national Courts, to overrule such Laws of the several States, as contravene the Federal Constitution; or instead of it, a direct negative upon the Laws must have been vested in the Executive department of the national Government.

261. The latter expedient was indeed proposed as a substitute for that which was adopted; and there is no other alternative that can be devised, without involving a power in any one State to suspend or subvert, within its limits, the acts and operations of every department of the General Government, though every other member of the Union may admit their validity.

262. That the jurisdiction of the Federal Courts should extend to all cases, whether civil or criminal, arising under Laws passed in virtue of the Federal Constitution, is evident from the principle already stated, "that the Judicial power in every Government must be co-extensive with the power of legislation."

263. In a Government formed from the union of

the People of so many separate and independent States, as well as of those States themselves, into one nation, organized under a written compact of government, the necessity of uniformity in the interpretation of the national Laws, is of itself sufficient to render this provision indispensable.

264. The extension of the Judicial power "to cases arising under Treaties, made under the authority of the United States," was equally necessary and proper; as without this jurisdiction in the Courts of the Union, there would be perpetual danger of collision, and even of war, with foreign powers, and an utter incapacity on the part of the Government to fulfil these national contracts.

265. As the Constitution, and the Laws of the United States made in pursuance of it, and all Treaties made under the authority of the Union, are declared to be "THE SUPREME LAW OF THE LAND;" and the Judges in every State are bound thereby, "*any thing in the Constitution or Laws of any State to the contrary notwithstanding*,"—as every Act of Congress, or of the State Legislatures, and every part of the Constitution of any State which is repugnant to the Federal Constitution, is null and void,—and as the Judicial Power of the Union extends "to all cases in law or equity, arising under the Constitution, Laws, and Treaties of the United States," it necessarily belongs to that Power, whenever a case judicially arises, to determine what is the Supreme Law of the land; and the determination of the Supreme Court of the United States must be final and conclusive, because the Constitution gives to that tribunal power to decide in every such case, and gives no appeal from its decision.

266. The right of Courts of Justice to pronounce

Legislative acts void, on the ground of their unconstitutionality, has sometimes been doubted or denied, either from a misconception of the principle on which it rests, or from an apprehension that the doctrine would establish a superiority of the Judicial, over the Legislative Power.

267. But no position is founded on clearer principles, than that every act of delegated authority, contrary to the tenor of the commission under which it is exercised, must be void; and no Legislative act contrary to the Constitution, which is the *commission* from which every department of the Government derives its authority, can therefore be valid.

268. Without an express provision to that effect, it is not to be presumed that the Constitution intended to enable the representatives of the People, in the Legislature, to substitute their will in the place of the will of their constituents; and to render a construction by the Legislature of their own powers conclusive upon the other departments.

269. It is more reasonable to conclude, that the Courts of Justice were intended, not only to represent the sovereign authority of the People in a separate and co-ordinate department; but were designed in that capacity, to act as an intermediate body between the People and the Legislature, in order, amongst other things, to keep the latter within the limits assigned to its authority.

270. The interpretation of the Laws is the peculiar province of Courts of Justice; and as the Constitution is in fact, a fundamental Law, and the Courts are bound to regard it as such, it is as much their duty to ascertain its meaning, as to ascertain the meaning of any act proceeding from the Legislative body.

271. If in any case there should be found an irreconcileable variance between a Law and the Constitution, that which has the superior obligation and validity ought of course to be preferred; the Constitution should prevail over the statute, and the intention of the People themselves be carried into effect, instead of the intention of their agents.

272. This conclusion by no means supposes a superiority of the Judicial, over the Legislative Power: it merely supposes that the People are superior to both; and where the will of the Legislature declared in the Law, stands opposed to the will of the People declared in the Constitution, the Judges are to be governed by the latter rather than by the former; and Courts are bound to regulate their decisions by that fundamental Law over which the Legislature has no control, rather than by those which it may at any time alter or repeal, and which derive their validity and effect from the Constitution.

273. There is no weight in the objection, that Courts of Justice, on the pretence of a repugnancy between a Law and the Constitution, may substitute their own pleasure in the place of the constitutional intentions of the Legislature; because this might as well happen in the case of two contradictory statutes, or in every adjudication upon any single Legislative Act.

274. The Courts are bound to declare the meaning of the Law; and if they should be disposed to exercise *will*, instead of *judgment*, the consequence in all cases equally, would be the substitution of their own pleasure, to that of the Legislature; and therefore, if the objection proved any thing, it would prove that there ought to be no Courts or Judges distinct from the Legislative body.

275. But the separation of the Judicial from the Legislative Power, was designed not only to create a distinct and independent body to expound and execute the Law; but to create a bulwark to protect a Constitution conferring limited powers, from Legislative encroachments and Executive usurpation; whilst this restraining power was itself confined within its proper limits, by corresponding checks, in the hands of the other departments, or arising from its own constitution.

276. A further object of the separation of the Judicial Power from the other departments in the Constitution of the United States, and of the precautions for maintaining its independence from their control, was to afford security to the General Government, in the exercise of its limited powers, against the inroads and influence of the several States.

277. All the reasons that support the right and duty of the Courts, in the ordinary exercise of their power, to declare void those Acts of Congess which in their judgment, are repugnant to the Constitution, apply with equal force to establish a similar control and authority in the Judiciary of the Union, over the acts and proceedings of the State Governments.

278. The People of the several States, by their adoption of the Constitution of the United States, in many instances superseded and modified in effect their State Constitutions, which the People of each State respectively alone could alter; and in those instances they were competent to do so, and to acknowledge and declare, not only the Federal Constitution itself, but the Laws and Treaties made in pursuance of its authority, to be the Supreme Law of the land, and of paramount obligation to either the Constitution or the Laws of any of the States.

279. By declaring that the Judicial Power of the United States should extend to all cases arising under the Constitution, the People vested in that department of the Government authority to determine the construction of that instrument, in every case in which such a question should arise judicially, *whether directly between the parties to the suit, or collaterally between the parties to the national compact.*

280. This authority of the Judiciary of the Union, necessarily results from the operation of the Laws of the United States upon the individual citizens of the several States; and if this distinct, independent, and appropriate department, were not expressly created as an intermediate body between the National and State Governments, it is, at all events, that in which, from its nature and constitution, this high and indispensable power necessarily resides, and could be most safely deposited.

281. But the Judiciary of the United States has no authority to declare void acts of a State Legislature, on the ground of their repugnancy to the State Constitution, unless in administering the local law of the State; in which case the Courts of the United States act exactly as the State tribunals are bound to act.

282. The propriety of extending the Judicial Power of the Union "to all cases affecting Ambassadors, other public Ministers, and Consuls," will appear from the consideration, that all diplomatic officers, like the two former descriptions of these public agents, are the immediate representatives of their sovereigns, and, as such, owe no subjection to any Laws but those of their own country and the Law of Nations; and that the acts of the latter description of officers are not in all cases subject to the private law of the country in which they are appointed to reside; and where they

are liable to its jurisdiction, the reasons applicable to all foreigners render it proper that they should be amenable only to the National tribunals.

283. Public ministers, in order to perform their duty to their own sovereign, should be independent of any other authority; their powers, duties, and privileges, are therefore determined, not by any municipal regulations or enactments, but by the Law of Nations, which is equally obligatory upon all sovereigns; and every question in which their rights or the rights of Consuls are involved, is so intimately connected with the peace of the nation, that it would be unsafe to submit them to any other than the national judicature.

284. The clause extending the Judicial Power "to all cases of Admiralty and Maritime Jurisdiction," is supported by the same considerations relative to the public peace, as respect public Ministers and Consuls; as Maritime causes generally depend on the Law of Nations, and commonly affect the rights of aliens.

285. Unless jurisdiction had been given to the national Courts of "cases to which the United States are a party," all the rights, powers, contracts, and privileges, which they possess in their sovereign capacity, would be at the mercy and control of the several States; and it would, besides, be a novelty in jurisprudence to prevent a sovereign power from suing in its own Courts.

286. But the terms in which this jurisdiction is conferred, does not vest in the Federal Courts jurisdiction in *all* controversies to which the United States shall be a party—so as to justify a suit to be brought against the United States without the consent of Congress; and according to an established maxim of

public Law, it is inherent in the nature of sovereignty not to be amenable to the suit of a private person without its own consent.

287. The extension of the Judicial Power of the United States "to controversies between two or more States," is essential to the peace and stability of the Union;—which, before the adoption of the Constitution, had been frequently endangered, and sometimes interrupted by territorial disputes, and interfering claims of boundary between the States: and it may justly be presumed, that under the National Government, the decision of all such controversies will be impartial.

288. As "controversies between a State and the citizens of another State," might excite animosities amongst the members of the Union, the Federal Courts are properly designated as the tribunals to decide them; and by the first Judiciary act, Congress conferred jurisdiction on the Courts of the United States, in suits prosecuted by a citizen of another State of the Union, or by citizens or subjects of foreign States.

289. The individual States, however, were not willing to submit to be arraigned as dependants, before the Federal Courts, at the instance of private persons; and it was subsequently declared by an amendment of the Constitution, that "the Judicial Power should not be construed to extend to any suit of Law or Equity commenced or prosecuted against any one of the United States, by citizens of another State, or foreign citizens or subjects."

290. Although the necessity of vesting jurisdiction in the Federal Courts in "controversies between citizens of different States," may not stand upon ground equally as strong as some of the preceding instances;

it may, nevertheless, be vindicated by high motives of public justice and policy; and there are many cases in which such a power may be highly expedient, if not indispensable, to carry into effect some of the privileges and immunities conferred by the Union; and some of the prohibitions upon the States.

291. The clause relative to "controversies between citizens of the same State claiming lands under grants of different States," is the only instance in which the Constitution directly provides for the cognizance of disputes between citizens of the same State in the Federal Courts; but it is not the only one in which it contemplates their being incidentally and ultimately subject to the national jurisdiction; as all the citizens of the United States are equally entitled to the benefit of that jurisdiction, in all cases arising under the Constitution, Laws, and Treaties of the Union.

292. The direct jurisdiction, in this particular instance, is founded on the reasonableness and propriety of giving the National Courts cognizance of all cases in which the State tribunals cannot be supposed to be impartial; and it attaches, not only to grants made by different States which were never united, but also to grants made by different States which were originally comprehended within the same jurisdiction and government, if made after the separation, even though the origin of the title may be traced back to an antecedent period.

293. The jurisdiction of "controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects," is founded on the responsibility of the Union for the conduct of its members; and on the necessity that this national responsibility for injury, should be accompanied by the faculty of preventing it.

294. As the perversion or denial of justice to foreigners, is with reason classed amongst the just causes of war, and as a great proportion of the controversies to which they are parties, involve national questions, it is not less essential to the preservation of the public faith, than of the public tranquillity, that all causes in which aliens are concerned should be referred to the National tribunals.

295. In order to ascertain,

III. *The manner in which the jurisdiction vested in the Judicial Power of the Union has been diffused and distributed,*

either by the Constitution, or by the Laws passed by Congress for giving it effect, it will be necessary to review the powers vested in the several Courts of the United States, established by the Constitution or created by law.

296. The first of these is a high and peculiar jurisdiction, not otherwise mentioned in the Constitution than by way of exception to the ordinary modes of trial; and which is denominated "*the Court for the trial of impeachments;*"—a tribunal which seems rather, to have been necessarily called into existence by the mere formation of the Constitution, than to be expressly created by it.

297. Impeachment is introduced into the Constitution as a known term of definite signification, to ascertain which we must have recourse to the English Common Law, from which it is derived.

298. The practice of impeachments arose from the experience, that persons entrusted with the administration of public affairs, would often infringe upon the rights of the People, and commit such crimes as

the ordinary Courts and Magistrates did not dare, or had no power, to punish.

299. Of such offences, the Representatives of the People in the Legislature, would not be proper judges, because they and their constituents are in such cases the parties injured; and are therefore properly the accusers.

300. As the ordinary Courts of Justice would naturally be swayed by the authority of such powerful accusers, the charge is brought for trial before the other branch of the Legislature; the members of which are supposed not to have the same interests and passions with the popular Assembly.

301. In accordance with this theory, the Constitution of the United States declares that "*the House of Representatives* shall have the sole power of impeachment," and that "*the Senate* shall have the sole power to try all impeachments."

302. The power of originating the inquiry, and of preferring and conducting the prosecution, is thus lodged with that branch of the Legislature which immediately represents the People; and the reasons which establish the propriety of this arrangement, indicate the necessity of admitting the other branch of the Legislative body, to its appropriate share in the investigation.

303. As the members of the Senate are by one degree further removed from the People, and are elected upon a different principle of representation; as they are chosen for a longer period, are more independent of popular favour, and are presumed to be more secure from party influence; they are more fit to sit as Judges, than the members of the House of Representatives.

304. Besides, as the Senators are chosen with the knowledge that they may, whilst in office, be called upon to exercise this high jurisdiction, they bring with them the confidence of their constituents as to their qualifications for this special duty; and an implied compact on their own parts, that it will be faithfully and honestly discharged.

305. The *objects* of this jurisdiction are all acts which involve, or proceed from, the abuse or violation of a public trust, and are with propriety denominated political offences, or "high crimes and misdemeanors," as their effects and consequences are immediately injurious to the body politic itself.

306. The *causes* of impeachment have reference only to public character and official duty, though the terms of the Constitution comprehend "treason," as well as "bribery, or other high crimes and misdemeanors." But the treason contemplated, is treason against the Government of the United States.

307. With the exception of treason, offences of every description, not immediately connected with the exercise of a public trust, are left to the ordinary course of Judicial proceedings; and neither branch of the Legislature can regularly inquire into them, except in relation to their own members, and with the view of expelling them if guilty. But the ordinary tribunals are not precluded, either before, or after an impeachment, from taking cognizance of public and official delinquency.

308. The only *subjects*, therefore, or persons liable to impeachment, are those who hold or have held a public office under the United States; and all Executive and Judicial officers of the United States, of every rank and description, are included.

309. A construction has been given to the Constitution by the Court of Impeachments, by which a member of the Senate was held not to be liable to an impeachment; the term "officers," as used in the Constitution, having been adjudged not to include Senators; and upon the same principle, members of the House of Representatives must also be exempt from impeachment.

310. The *Articles of Impeachment*, as the document containing the formal specification of the charge is technically called, need not be drawn up with the precision required in ordinary *Indictments*, or accusations at Law; but they must be distinct and intelligible, as no one is bound to answer to a charge that cannot easily be understood.

311. As Articles of Impeachment can be exhibited only by the House of Representatives, if the Senate, in the exercise of its Executive functions or otherwise, become apprized of the commission of unlawful acts by a public officer, requiring, in its opinion, a public investigation, it is its duty to communicate the evidence it may possess to the House of Representatives.

312. But the bare communication of the facts would be all that would be consistent with the duty of the Senate on such an occasion. It should carefully avoid recommending or suggesting an impeachment; and the same course should be pursued by the President of the United States, under similar circumstances.

313. No definite number of members is required to constitute a Court; but, as it is in "the Senate," that the power of trying impeachments is vested, the number requisite to constitute a quorum of that body

(i. e. a majority of all the Senators appointed,) must also be necessary to constitute the Court; and must be sufficient for that purpose, although no conviction can take place without the concurrence of two-thirds of the *members* present.

314. The Vice President of the United States, being President of the Senate, presides, when present, in the Court; except when the President of the United States is tried, on which occasion the Chief Justice presides; and the reason which forbids the Vice President to preside in such a case, requires that he should retire wholly from the Court.

315. The Constitution does not declare that the Vice President shall be restricted on the trial of impeachments, as in Legislative proceedings, to a casting vote; and as he is constituted one of the Judges of the Court, by being appointed to preside without any restriction, it seems to follow that he is entitled to vote in the same manner as the other Judges. The same reasoning would establish a similar right in the Chief Justice, when presiding on the trial of the President.

316. The same general rules of evidence prevail on the trial of impeachments, as in ordinary trials at Common Law; and the *respondent* or accused party, is entitled to the benefit of counsel; but it is not necessary that he should be personally present, as the trial may proceed in his absence, if he have had due notice to appear.

317. When sitting as a Court for the trial of impeachments, the members are put under oath or affirmation. Their consultations, as well on collateral and incidental points, as on the main question, are conducted in private; but the judgment must be ren-

dered in public; and can extend no further than to removal from office, and disqualification to hold any office of trust or profit under the United States.

318. Although the party impeached may be found guilty of the highest political crime, viz. treason against the United States, yet his life is not thereby put in jeopardy before the Court for the trial of impeachments; and in no case is the liberty or property of a person convicted, affected by the judgment of this tribunal; as prosecution and punishment await him elsewhere, according to the usual course of Law.

319. As by the sentence pronounced on conviction in cases of impeachment, an appointment made by the Executive authority is superseded, and the party is rendered incapable of re-appointment to any office; the President is disabled from granting a pardon, and thus restoring the competency of the offender.

320. But there is no restriction on the power of pardoning for the same act, in case of a conviction in the common course of Law; for the pardon in that case extends only to the punishment imposed by the ordinary tribunals, without affecting the sentence of the Court for the trial of impeachments.

321. The distribution of the Judicial authority of the Union, amongst the several Courts of ordinary Judicature, except in a few specified cases, is devolved on Congress; and in the execution of that power, Congress is not bound to enlarge the jurisdiction of the respective tribunals to every subject, or to vest it in every form, which the Constitution might warrant in reference to each of them in particular.

322. The whole Judicial Power, in some form or other, must nevertheless, in all cases at least in which

it is exclusive of the States, be at all times duly vested and distributed amongst the National Courts; and in all cases where the Judicial Power of the United States is to be exercised, it is for Congress alone to prescribe the rules of proceeding, to direct the process, and to declare its nature and effect, and the mode in which the judgments consequent thereon shall be executed.

323. As the Judicial Power of the United States extends to all the cases enumerated in the Constitution, it may be extended to them by Congress where not restricted by the Constitution, in any form in which the Judicial Power may be exercised—either in the shape of *original*, or *appellate* jurisdiction, or both; for there is nothing in the nature of these cases which binds to the exercise of the one, in preference to the other.

324. In order to ascertain to what extent, and in what manner the Federal jurisdiction, both *original* and *appellate*, has actually been disposed of, either by the Constitution or by Law, it will be necessary to examine specifically the organization and powers of the several Courts, as ordained by the one, or established by the other.

325. *The Supreme Court of the United States*, although created by the Constitution, received its present organization from the Judiciary Act of 1789, and the several Laws subsequently passed by Congress in addition to that Statute.

326. The Constitution merely declares that there shall be a Supreme Court, with certain *original* and *appellate* powers; and it is only to be implied from that instrument, that the Chief Justice of the United States shall preside in it, with an indefinite number of Judges, to be associated with him.

327. But the Acts of Congress declare that this Court shall consist of the Chief Justice and six associate Judges, any four of whom constitute a *quorum*; and they also direct, that it shall hold one term annually, at the seat of the national Government, commencing on the first Monday in January.

328. Although the presence of four of the Judges is required for the general business of the Court; yet any one or more of them may make all necessary orders in a suit, preparatory to the hearing or trial; and it is made the special duty of a particular associate Judge, to attend at Washington annually, on the first Monday in August, for that purpose.

329. The Constitution vests in the Supreme Court, *original* jurisdiction in all cases affecting Ambassadors, other public Ministers, and Consuls; and in those in which a State may be a party; but the jurisdiction conferred in relation to suits and proceedings against foreign Ambassadors and Ministers, and their domestics, is only such as a Court of Law can exercise consistently with the Law of Nations.

330. In all the other cases enumerated in the Constitution, it vests in the Supreme Court "*appellate* jurisdiction, both as to the Law and the fact, with such exceptions, and under such regulations, as Congress shall make."

331. In suits and proceedings *against* Ambassadors, or other public Ministers, or their domestics; and in all controversies *of a civil nature*, where a State can be made a party, except in suits by a State against one or more of its citizens, against citizens of other States, or against aliens, the original jurisdiction of the Supreme Court is rendered *exclusive* by Congress.

332. In suits *brought by* Ambassadors, or other public Ministers, or in which a Consul or a Vice Consul *is a party*, and in suits by a State against one or more of its citizens, against citizens of other States, or against aliens, its jurisdiction remains concurrent either with the inferior National Courts, or with the Courts of the several States.

333. It has been made a question, however, whether the whole *original* jurisdiction of the Supreme Court, was not intended to be *exclusive*, both of the inferior Courts of the United States, and of the State Courts. But if any portion of this original jurisdiction may, in the discretion of Congress, be shared with other Courts, it cannot be enlarged.

334. Congress can neither invest the Supreme Court with *original* jurisdiction in those cases in which the Constitution declares that its jurisdiction shall be appellate, nor invest it with appellate jurisdiction in those cases in which the Constitution declares that it shall be original.

335. The cases in which a State is a party, to which the original jurisdiction of the Supreme Court extends, either exclusively or concurrently, must be cases in which a State is either nominally or substantially the party; and it is not sufficient that a State may be consequentially affected.

336. Although the Judicial Power of the Union extends to controversies between a State and *foreign States*, Citizens, or Subjects, and the Constitution gives to the Supreme Court original jurisdiction in all such cases; yet the "Indian Tribes" are not considered "foreign States," within the meaning of the Constitution.

337. The most usual modes of exercising appellate

jurisdiction are by Writ of Error, which is a Common Law process for the removal of a suit from an inferior Court, but which removes nothing for re-examination but the Law of the case; and by Appeal, which is a proceeding of Civil Law origin, and removes a cause entirely, and subjects the facts, as well as the Law, to a review and re-trial.

338. Writs of Error are applicable only to suits at Law tried by a Jury; whilst Appeals are adapted to cases of Equity and Admiralty jurisdiction; and it is declared, by an amendment to the Constitution, that "in suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved: and no fact tried by a Jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the Common Law:" which is a prohibition to the National Courts, to re-examine facts tried by a Jury, in any other manner.

339. Final Judgments and decrees in Civil actions, and suits in Equity, in the *Circuit Courts of the United States*, whether brought there by original process, or removed thither either from the State Courts, or from the *District Courts* of the United States, in the enumerated cases of Federal cognizance, of which the Supreme Court has not the exclusive original jurisdiction, and where the matter in dispute exceeds the sum of two thousand dollars, may be re-examined, and reversed or affirmed in the Superior Court.

340. Final Judgments and decrees of the *Circuit Courts*, in cases of Admiralty and Maritime jurisdiction, and in prize causes, where the matter in dispute exceeds the same amount, may be reviewed on Appeal in the Supreme Court; and in Admiralty and prize causes new evidence is admitted on Appeals, conform-

ably with the general doctrines and usages of Appellate Courts of Admiralty.

341. A final Judgment or decree of the *highest Court* of Law or Equity in a State, may be brought up, on the allegation of error in point of Law, to the Supreme Court of the United States, in the following cases, viz:

1. If the validity of a Treaty, of an Act of Congress, or of an authority exercised under the Government of the United States, was drawn in question in the State Court, and the decision was *against* that validity.
2. If the validity of any State Law or authority, was drawn in question on the ground of its repugnancy to the Constitution, Treaties, or Laws of the United States, and the decision was *in favour of* its validity.
3. If the construction of any clause of the Constitution, or of a Treaty, or of a Statute of the United States, or of a commission held under them, was drawn in question, and the decision was *against* the title, right, privilege, or exemption specially claimed under the authority of the Union.

342. But upon Appeals from a decision of a State Court, no other error can be assigned or regarded in the Supreme Court, than such as appears on the face of the record, and immediately respects the question of the validity or construction of the Constitution, Treaty, Statute, commission, or authority in dispute.

343. In case of a reversal of the Judgment or decree of the highest State Court, the cause may either be *remanded* to that Court, or the Supreme Court of the United States may, if the cause has once before been remanded, proceed to a final disposition of it, and award Execution accordingly.

344. If the highest Court in a State reverse the Judgment of a subordinate Court, and on Appeal the Judgment of the highest State Court be in its turn reversed in the Supreme Court of the United States, the latter Judgment so reversed, becomes a mere nullity, and the mandate for Execution may issue directly from the Supreme Court of the United States to the inferior State Court.

345. The validity of this proceeding depends on the constitutionality of the 25th section of the Judiciary Act of 1789, which provides for the prosecution of Appeals from decisions of the highest State Courts in the cases enumerated; which provision has been declared by the Supreme Court to be warranted by the Constitution.

346. The grant of the Judicial Power in the Constitution was declared, on that occasion, to be absolute; and it was held to be imperative upon Congress to provide for the appellate jurisdiction of the Federal Courts, in all cases in which Judicial Power was exclusively granted by the Constitution, and not already given, by way of original jurisdiction, to the Supreme Court.

347. The Constitution intended that the Judicial Power, either in an original or appellate form, should extend absolutely to *all* cases in Law or Equity, arising under the Constitution and Laws of the United States, and the Treaties made under its authority; to *all* cases affecting Ambassadors, other public Ministers, and Consuls; and to *all* cases of Admiralty and Maritime jurisdiction,—because these cases were of vital importance to the sovereignty of the Union, entered into the national policy, and affected national rights.

348. But with respect to the other cases enumerat-

ed, the Constitution seems designedly to have dropped the word "*all*," so as not absolutely to extend the jurisdiction of the Federal Judiciary to "*all* controversies," but merely to "controversies," in which the United States are a party, or between two or more States, or between citizens of different States, &c. and has left it to Congress to qualify the jurisdiction, whether original or appellate, in such manner as public policy may dictate.

349. Whatever weight is due to this distinction, it is manifest that the Judicial Power is, in some cases, unavoidably exclusive of all State authority, and in all others enumerated in the Constitution, may be made so at the election of Congress; and the Judiciary Act accordingly assumes that, in all the cases to which the Judicial Power of the United States extends, Congress may rightfully vest exclusive jurisdiction in the national Courts.

350. The Criminal and the Admiralty jurisdiction, are necessarily *exclusive; and it is only in those cases where, previously to the Constitution, the State tribunals possessed jurisdiction independently of national authority, that they can now exercise a concurrent jurisdiction.*

351. The exercise of appellate jurisdiction is not limited by the Constitution to the Supreme Court. Congress may create a succession of inferior tribunals, in each of which it may vest appellate, as well as original, jurisdiction. But in all cases where a concurrent original jurisdiction is vested in the Supreme Court by the Constitution, it must possess an appellate power over the decisions of those Courts upon which Congress confer, in the same cases, concurrent jurisdiction, whether in its original or appellate form.

352. The appellate jurisdiction of the Supreme Court is alone declared by the Constitution, to be subject to such exceptions and regulations as Congress may prescribe; so that, in cases falling within that jurisdiction, it alone remained in the discretion of Congress, to provide for the exercise of the Judicial Power in all the various forms of Appeal.

353. The appellate Power of the National Judiciary is not limited to cases pending in the Courts of the United States; for if it had been so limited, the jurisdiction of the Federal Courts must have been exclusive of the State Courts, in all the cases enumerated in the Constitution.

354. As the Judicial Power of the United States extends to all cases arising under the Constitution, Laws, and Treaties of the Union, and to all cases of Admiralty and Maritime jurisdiction, &c. the State Courts cannot, consistently with the express grant of the Constitution, entertain any jurisdiction without the right of appeal; otherwise the appellate jurisdiction of the Supreme Court, as to those cases, would be defeated, contrary to the manifest intent of the Constitution.

355. The appellate Power of the Federal Courts must, therefore, extend to the State Courts, so long as the latter entertain any concurrent jurisdiction over any of the cases which the Constitution has declared to be within the Judicial cognizance of the United States.

356. The Constitution contemplated that such cases would arise in the State Courts, not only in the ordinary exercise of their concurrent jurisdiction; but that those tribunals would incidentally take cognizance of questions under the Constitution, Laws, and

Treaties of the United States, of which the National Courts have exclusive jurisdiction; and as the Judicial Power of the Union embraces both classes of cases, by the very terms of the Constitution it extended the appellate jurisdiction of the Supreme Court to the State tribunals, by making it attach upon every case comprised within the Judicial Power of the General Government.

357. This appellate jurisdiction is required, to give efficacy to the power of deciding in all cases of conflict between the several States, or of collision between the powers claimed by a State, and those claimed by the United States; and to maintain the supremacy of the Constitution, Laws, and Treaties of the Union, over the Constitutions and Laws of the several States, as well as to preserve uniformity of decision throughout the United States, upon all subjects embraced by the Federal Constitution.

358. The appellate Power of the Federal Judiciary over the State tribunals, extends to a final judgment in a State Court, in a case within the cognizance of the Union, although a State be a party; and the amendment declaring that the Judicial Power of the United States is not to be construed to extend to any suit in Law or Equity, commenced or prosecuted against a State by an individual, does not apply to a Writ of Error, as it is not a suit against a State, within the meaning of the Constitution.

359. Jurisdiction is given to the Courts of the United States in two classes of cases; in the first, it depends on the character of the cause, whosoever may be the parties; and in the second, it depends entirely upon the character of the parties, and it is then immaterial what may be the subject of controversy

360. In an ordinary case of a controversy between a State and one of its citizens, an Appeal does not lie from the State to the Federal Courts, for, in such a case, the jurisdiction is determined by the character of the parties; but when, in a suit between a State and one of its citizens, the validity of an act of Congress is drawn in question, and the decision is against its validity, the appellate Power of the Supreme Court extends to it, because, in all cases arising under the Constitution, the Jurisdiction of that Court may be exercised in an appellate form, whoever may be the parties.

361. Neither does it make any difference in cases arising under the Constitution, Laws, and Treaties of the Union; whether the cause in which the appellate jurisdiction of the Supreme Court is exercised, be a criminal prosecution, or a civil controversy; as the parties are not less interrested in the operation of an unconstitutional Law, nor less entitled to the protection of the Constitution, when the judgment of the State Court inflicts a disgraceful punishment, than when it merely affects their property.

362. The Supreme Court is, moreover, clothed with that superintending authority over the inferior Courts of the United States, which is requisite and proper in the highest tribunal, and last resort for justice, of the people of the United States; and consequently it has power to issue *prohibitory* and *mandatory* writs in cases warranted by the principles and usages of Law, to any Courts appointed, or persons holding office, under the United States.

363. All the Courts of the United States have power to issue all writs not specially provided by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the

principles and usages of law; and the individual Judges may, by writ of *Habeas Corpus*, relieve the citizen from all manner of unjust imprisonment occurring under, or by colour of, the authority of the United States.

364. Under the power granted to Congress, to erect tribunals inferior to the Supreme Court, *Circuit Courts* are established in each of the Judicial *Districts* (with some few exceptions) of the seven *Circuits*, into which the United States are by Law divided.

365. Some Districts are not embraced within any Circuit, and have merely *District Courts*; which, however, exercise the powers of a Circuit Court, within their respective districts, except in cases of error and appeal; and writs of Error and Appeals lie from their decisions, directly to the Supreme Court, under the same regulations that apply to the Circuit Courts of other Districts.

366. In the *District of Columbia*, (which comprises the Territory ceded to the United States for the seat of the General Government, and is under the exclusive jurisdiction of Congress,) there is a Circuit Court composed of a Chief Justice, and two Associate Judges.

367. In each Judicial District comprehended within the seven Circuits, two sessions of the Circuit Court are annually held by one of the Judges of the Supreme Court, and the Judge of the District Court; and to each Circuit respectively, a particular Judge of the Supreme Court is assigned by Law. But the Supreme Court, in cases where special circumstances in their judgment render it necessary, may assign two Judges of the Supreme Court to attend a Circuit Court.

368. If a vacancy happen by the death of the Judge of the Supreme Court to whom the Circuit is assigned, the District Judge may discharge all the duties of the Circuit Court for his district, except that he cannot sit on a writ of Error on a judgment of the District Court; and when the District Judge is absent, or has been Counsel, or is interested in the cause, the Circuit Court may be held by a Judge of the Supreme Court alone.

369. If an opposition of opinions between the Judge of the Supreme Court and the District Judge arise in a case in which the Circuit Court has original jurisdiction, it is certified to the Supreme Court, and thereupon the case is removed into that Court for a final judgment or decree; but in all cases of appeal or removal from a District, to a Circuit Court, judgment is to be rendered in the latter, in conformity with the opinion of the Judge of the Supreme Court.

370. The Circuit Courts have *original* and *exclusive* cognizance (except in certain cases hereafter mentioned,) of all crimes and offences cognizable under the authority of the United States, exceeding the degree of ordinary misdemeanors; and of those they have *concurrent* jurisdiction with the District Courts.

371. They have *original* cognizance, *concurrently* with the Courts of the several States, of all suits of a civil nature at Law or in Equity, where the matter in dispute exceeds five hundred dollars, and the United States are *plaintiffs*, or an alien is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State.

372. The Circuit Courts have also original jurisdiction in Equity and at Law, of all suits arising un-

der the acts of Congress relative to copyrights, and the rights growing out of Patents for new inventions and discoveries in the useful arts.

373. They have likewise original jurisdiction, *concurrent* with the District Courts, and with the Courts and Magistrates of the several States, of all suits at Common Law where the United States, or an officer thereof, sues under the authority of an act of Congress; although the matter in dispute does not exceed one hundred dollars.

374. The Circuit Courts have *appellate* jurisdiction in all final decrees and Judgments of the District Courts, where the matter in dispute exceeds fifty dollars; and if any suit be commenced in a State Court against an alien, or by a citizen of the State in which the suit is brought, against a citizen of another State, and the matter in dispute exceeds five hundred dollars, *the defendant*, on giving security, may remove the cause to the Circuit Court for the District; and this right of removal is founded on the appellate power vested in the Courts of the United States over the State Courts in all cases of federal cognizance, which may be exercised as well before, as after Judgment.

375. The Circuit Courts of the United States, though *inferior* Courts in the language of the Constitution, are not so in the sense which the Common Law attaches to the term; nor are their proceedings subject to the narrow rules of interpretation which apply to inferior Courts of Common Law, and Courts of special jurisdiction. On the contrary, they are Courts of original and durable jurisdiction, and, as such, are entitled to liberal intendments in favour of their powers.

376. They are, nevertheless, Courts of limited jurisdiction; and have cognizance, not of cases gene-

rally, but only of a few cases under special circumstances, amounting to a small proportion of those which an unlimited jurisdiction would embrace; and the legal presumption is, that a cause is without their jurisdiction until the contrary be shewn.

377. *The District Courts of the United States* were also created in virtue of the power granted to Congress by the Constitution, of erecting tribunals inferior to the Supreme Court.

378. The United States are at present divided into thirty-two Judicial Districts; and in general each District is composed of an entire State; but in some of the larger States there are two Districts.

379. A Court is established in each District, consisting of a single Judge, who holds annually four stated terms, and also special Courts at his discretion; and there is also a District Court for the District of Columbia, held by the Chief Justice of the Circuit Court for that District.

380. The District Courts have, *exclusively* of the State Courts, cognizance of all lesser crimes and offences cognizable under the authority of the United States, and committed either within their respective Districts, or upon the high seas, and which are punishable by fine not exceeding one hundred dollars, and imprisonment not exceeding six months.

381. They have also exclusive *original* cognizance of all civil causes of Admiralty and Maritime jurisdiction; of seizures under the impost, navigation, and trade Laws of the United States, where the seizures are made on the high seas, or in waters within their respective Districts, navigable from the sea by vessels of ten or more tons burden; and of all other seizures under the Laws of the United States; and of

all suits for penalties, or forfeitures incurred under those Laws.

382. They have, moreover, jurisdiction *concurrently* with the Circuit Courts, and with the State Courts, of causes in which an alien sues for a violation of rights accruing to him under the Law of Nations, or a Treaty of the United States; and of all suits at Common Law, in which the United States are plaintiffs, and the matter in dispute amounts to one hundred dollars.

383. They have jurisdiction *exclusive* of the State Courts of all suits against Consuls or Vice Consuls, except of offences of which the Circuit Courts of the United States have the exclusive cognizance.

384. They have, lastly, *exclusive original* cognizance of proceedings to repeal Patents obtained surreptitiously and upon false suggestions, and of complaints, by whomsoever instituted, in cases of capture made within the waters of the United States, or within a marine league of their coasts.

385. *The Judges* of the District Courts have, in cases where the party has not had reasonable time to apply to the Circuit Court, as full power as is exercised by the Judges of the Supreme Court, in granting Writs of Injunction in Equity causes, to operate within their respective Districts, and continue until the next sitting of the Circuit Court for the District.

386. *The Courts of the Territories of the United States*, have been created from time to time by Acts of Congress establishing TERRITORIAL *Governments*, in those parts of the Union which were either ceded by individual States for the common benefit, or, having been obtained by Treaty from foreign Nations,

were never comprised within the boundaries of any of the original members of the Confederacy.

387. In the *Territory of Michigan*, Congress has adopted the principle of the ordinance for the Government of the "Territory of the United States north-west of the river Ohio," passed under the Confederation, by which the Judges hold their offices *during good behaviour*.

388. There is in Michigan a *Supreme Court*, consisting of three Judges (appointed by the President, with the advice and consent of the Senate), any two of whom form a Court, which possesses both a Common Law and Equity jurisdiction throughout the Territory. But a fourth Judge was subsequently added for certain remote counties, with an appeal to the Supreme Court of the Territory; and the powers and duties of the subordinate Magistrates are regulated by the local Legislature.

389. In the Territories of *Arkansas* and *Missouri*, the Judicial Power is vested in a *Superior Court*, and in such inferior Courts as their respective Legislatures shall from time to time establish, and in Justices of the Peace. The Judges of the Superior Court are appointed by the President, with the advice and consent of the Senate, and those of the inferior Courts, as well as the local Magistrates, by the Governor of the Territory.

390. The Superior Court in each of these Territories is held at such times and places as the local Legislature directs, and is composed of three Judges, who continue in office for four years, unless sooner removed by the President, and have jurisdiction in all civil and criminal cases, and exclusive cognizance of all capital cases within their respective Territories.

But any two of the Judges constitute a Court of appellate, and any one a Court of original, jurisdiction.

391. In *Florida*, the Judicial Power is vested in two Superior Courts, and in such inferior Courts and Magistrates as the Legislative Council of the Territory may establish.

392. The Judges and the inferior Magistrates are respectively appointed in the same manner, and hold their offices for a similar term as the Judges and Magistrates of the Arkansas and Missouri Territories.

393. One of the Superior Courts is for East Florida, and the other for West Florida; and each consists of one Judge. Each Court has jurisdiction in all criminal cases, and exclusive cognizance of all capital cases, within its respective subdivision of the Territory.

394. These Superior Courts are invested with original jurisdiction in all Civil cases of the value of one hundred dollars, and cognizable by the Laws of the Territory; and they have, moreover, within their respective limits, the same jurisdiction in all cases arising under the Constitution and Laws of the United States, as is vested in the District Courts of the United States, in those Districts in which the latter have the powers of a Circuit Court, subject to the like rules and regulations in regard to Writs of Error and Appeals.

395. The Superior Courts of the other Territories in which a District Court of the United States has not been established by Congress, exercise within their respective limits the same jurisdiction, subject to the like appeal, as the District Courts having the

powers of Circuit Courts, *in those cases only in which the United States are concerned.*

396. The functions of the Judges of all the Courts of the United States are strictly and exclusively Judicial, except in cases where the *Territorial* Judges exercise Legislative Powers. They cannot, therefore, be called upon to advise the President in any Executive measures, or to give extra-judicial interpretations of the Law, or to act as Commissioners under an Act of Congress.

397. The Judges of the District and Territorial Courts, are required to reside within their respective jurisdictions; and no Judge of the United States can act as counsel, or be engaged in the practice of the Law.

398. *The State Courts and Magistrates* are in some cases invested by Congress with cognizance of cases, arising under the Laws of the United States.

399. Congress, in the course of its legislation upon the objects entrusted to it by the Constitution, may indeed commit the decision of causes arising under a particular Law, solely, if deemed expedient, to the Courts of the United States; but in every case in which the State Courts are not expressly excluded, they may take cognizance of causes growing out of an Act of Congress.

400. Although Congress cannot confer jurisdiction on any Courts but such as exist under the Constitution and Laws of the United States; yet the State Courts may exercise jurisdiction in cases authorized by the Laws of the State, and not prohibited by the exclusive jurisdiction of the Federal Courts.

401. Various duties have been imposed by Con-

gress on State Courts and Magistrates, and they have been invested with jurisdiction in Civil suits, and in complaints and prosecutions for fines, penalties, and forfeitures, arising under the Laws of the United States. In Civil suits the State Courts entertain that jurisdiction; but in penal and criminal cases, they have in several instances declined its exercise.

402. In what cases, and to what extent, they will exercise criminal jurisdiction under the Laws of the Union; and under what circumstances, and how far, the Judges of the State Courts have power to issue an *Habeas Corpus*, and decide on the validity of a commitment or detainer under the authority of the National Government, are questions which have been variously determined in the State Courts, and have never been definitely settled in the Supreme Court of the United States.

403. It seems, however, to be admitted, that Congress cannot compel a State Court to entertain jurisdiction in any case. It only permits State Courts which are competent to the purpose, and have an inherent jurisdiction adequate to the case, to entertain suits in given cases; and such State Courts do not thereby become "inferior Courts," in the sense of the Constitution, because they are not "ordained and established by Congress."

404. The State Courts are in these cases left to consult their own duty in reference to their own State authority and organization; but if they do voluntarily entertain jurisdiction of causes cognizable under the authority of the United States, they do so on the condition that the appellate jurisdiction of the Union shall apply to them.

405. Their jurisdiction of Federal causes must,

nevertheless, be confined to Civil actions for civil demands, or to enforce penal statutes; for they cannot hold jurisdiction of offences exclusively against the United States, as every criminal prosecution must charge the offence to have been committed against the sovereign whose Court sits in judgment upon the offender, and whose Executive authority may pardon him.

406. In all cases where the jurisdiction of the State Courts is concurrent with that of the Federal Courts, the sentences of either, whether of acquittal or conviction, is a bar to a prosecution in the other jurisdiction for the same offence.

---

## PART SECOND.

ON THE NATURE, EXTENT, AND LIMITATION OF THE POWERS VESTED IN THE NATIONAL GOVERNMENT, AND THE RESTRAINTS IMPOSED ON THE STATES.

407. All the powers requisite to secure the objects of the Union are vested in the General Government; whilst all such powers as are not essential to those objects, are reserved to the State Governments or to the People.

408. In all other respects the sovereignty of the individual States remains unimpaired; and the respective obligations of allegiance and protection, in reference to them are unaltered, except that, in all cases within the range of the Federal jurisdiction, the paramount obligations of allegiance and protection with respect to the General Government, necessarily

supersedes those which would otherwise have been reciprocally due to and from the several States.

409. From the nature of the case, the National and State Governments cannot be coequal; for two Governments, of entirely concurrent right and authority, cannot exist in the same society.

410. Superiority was therefore conferred on the General Government, as the Government of the whole nation, over the State Governments, or the Governments of its several parts.

411. The Constitution, in the name of the whole People, accordingly declares its own supremacy, and that of the Laws made in pursuance thereto, and of Treaties made under the authority of the United States, over the Constitutions and Laws of the several States.

412. The Powers conferred on the National Government may be reduced to different classes, as they relate to the following different objects, viz:

1st. Security from foreign danger.

2d. Intercourse with foreign nations.

3d. Maintenance of harmony amongst the States.

4th. Certain miscellaneous objects of general utility.

5th. Restrictions on the powers of the States; and,

6th. Provisions for giving efficacy to the Powers vested in the Government of the United States.

## CHAPTER I.

### OF THE POWERS VESTED IN THE GENERAL GOVERNMENT, RELATIVE TO SECURITY FROM FOREIGN DANGER.

413. As security from foreign danger is one of the primary objects of civil society, so it was an avowed and essential purpose of the union of the States; and the powers requisite to attaining it were effectually confided to the National Government, and consist

1. Of the Powers of declaring War, and granting letters of marque and reprisal.
2. Of making rules concerning captures by land and water.
3. Of providing armies and fleets; and of regulating and calling forth the militia; and,
4. Of the Powers of levying taxes, and of borrowing money.

414. The right of self-defence is derived from the Law of Nature; and it is the indispensable duty of civil society to protect its members in the enjoyment of their rights, both of person and property.

415. It is in virtue of this fundamental principle of every social compact, that an injury done or threatened to the perfect rights of a Nation, or of any of its members, and susceptible of no other redress, is deemed by all approved writers upon public Law, to afford just cause of war.

416. But as the evils of war are certain, whilst its results are doubtful, both wisdom and humanity require that every possible precaution should be used, and every necessary preparation made, before a Nation engages in it.

417. It was formerly usual to precede hostilities by a public declaration, communicated formally to the enemy; but in modern times this practice has been discontinued, and the Nation proclaiming war now confines itself to a declaration within its own territory, and to its own People.

418. *The Power of declaring war* is vested by the Constitution of the United States in Congress; without whose consent no State can engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

419. Although Congress alone, by an Act passed like other Laws, according to the forms of legislation, can of itself subject the Nation to war; yet a smaller portion of the Government is competent to restore peace; as hostilities may be terminated by a truce, which, it is presumed, the President of himself may make, and of which the duration may be indefinite; whilst Treaties of Peace are made by the President and Senate, without the intervention of the House of Representatives.

420. As the delay of making war may sometimes be detrimental to individuals who have suffered from the depredations of foreign Nations, Congress are invested with *the Power of issuing Letters of Marque and Reprisal;* the latter signifying *a taking in return;* the former, *passing the frontier*, in order to such taking.

421. This Power is plainly derived in all cases from that of making war; and induces, in its exercise, an incomplete state of hostilities, which generally ends in a formal denunciation of war.

422. By the Law of Nations, Letters of Marque and Reprisal may be granted whenever the subjects

of one State are oppressed and injured by those of another, and justice is denied by the State to which the oppressor belongs.

423. They are in the nature of a Commission granted by the Government to particular citizens, authorizing them to seize the bodies or goods of citizens of the offending Nation, wherever they may be found, until satisfaction be made.

424. The necessity of calling in the Sovereign Power to determine when this proceeding may be resorted to, is obvious; as otherwise every private individual might act as a judge in his own cause, and at his pleasure involve the Nation he belongs to in war to avenge his private injury.

425. *The Power of making "rules concerning Captures on Land and Water,"* which is superadded to the Power of declaring war, is not confined to captures made beyond the territorial limits of the United States; but comprehends rules respecting the property of an enemy found within those limits.

426. It is an express grant to Congress of the Power of confiscating such property, as an independent substantive Power, not included in the Power to declare war.

427. When a war breaks out, the question as to the disposition of enemy's property in the country is a question of policy for the consideration of the National Legislature, and not proper for the consideration of the Judiciary, which can only pursue the Law as it is written.

428. A declaration of war by the sovereign power of one State against another, implies that the

whole Nation declares war; and that all the subjects of the one are enemies to all the subjects of the other.

429. Although a declaration of war has this effect, with regard to individuals, and thus gives to them those mutual and respective rights under the Law of Nations, which a state of war confers; yet the mere declaration does not, by its single operation, produce any of those results which are usually effected by further measures of the Government, consequent upon the declaration of war.

430. By a strict interpretation of the ancient public Law, War gives to a Nation full right to take the persons, and confiscate the property, of its enemy wherever it may be found; and the mitigation of this rule, which the policy of modern times has introduced into practice, although it may affect its exercise, cannot impair the right itself; and whenever the Legislature chooses to bring it into operation, the Judicial department must give it effect.

431. Until the Legislative will, however, is distinctly declared, no power of condemnation can exist in the Courts; and proceedings to condemn enemy's property found in the country at the declaration of war, can be sustained only on the principle of their having been commenced in execution of an existing Law.

432. An act of Congress simply declaring war, does not, by its own operation, so vest such property in the Government as to support Judicial proceedings for its seizure and condemnation; but vests merely a right, of which the assertion depends on the future action of the Legislature.

433. *The Power of raising armies and equipping*

*fleets*, seems to be involved in the power of declaring war; and to have left it to be exercised by the States under the direction of Congress, would have inverted a primary principle of the New Constitution, and transferred in practice, the care of the common defence, from the Federal head, to the individual members of the Union.

434. From the nature of the Federal Government, there can be little danger from a standing army in time of peace; whilst the impolicy of restraining the discretion of Congress is manifest, from considering that the efficiency of the power depends on its being indefinite; and upon its extending to the maintenance of an army and navy in peace as well as in war.

435. Unless the National Government could set bounds to the ambition, injustice, or exertions of other nations, no restraints should be imposed on the discretionary powers of Congress in relation to the subject; nor any limits prescribed to its efforts for the defence and preservation of the Nation.

436. A readiness for war in time of peace is not only necessary for self-defence, but affords the most certain means of preventing aggression, by exhibiting such resources and preparations for repelling it, as may discourage or deter an enemy from attempts which would probably prove unavailing.

437. A jealousy of the power of raising and maintaining armies and fleets in time of peace, arose from the prevailing sentiment at the time of the Revolution, in regard to the undefined power of making war, and supporting, by its own authority, regular troops in time of peace, which was the acknowledged prerogative of the British crown.

438. The abuse of this prerogative had led to the adoption of that article in the Bill of Rights, framed by the Convention-Parliament of England in 1688, which declares, that "raising or keeping a standing army in time of peace, *unless with the consent of Parliament*, is against Law."

439. The principles which had inculcated in the Colonists, jealousy of the power of an hereditary monarch, seem to have extended it, after independence was declared, to the Representatives of the People in the State Legislatures.

440. In the Constitutions of two of the States, prohibitions of Military establishments in time of peace were introduced; and in those of some others of the States in which the absolute prohibition was not adopted, a clause similar to that of the English Bill of Rights, was inserted.

441. This clause, however, was not, from its terms, applicable to the State Governments; as the power of raising armies could by no construction, be held to reside any where else than in the Legislatures themselves; and its introduction was in effect to declare, that a measure should not be adopted *without the consent of that body*, which alone had power to originate and sanction it.

442. In the Constitutions of the other States, there is no provision on the subject; and even in those which seemed to have intended a total interdiction of Military establishments in time of peace, the expressions are *monitory*, rather than *prohibitory*; whilst their ambiguity appears to have resulted from a conflict between the desire of excluding such establishments, and the conviction that their absolute exclusion would be unwise and unsafe.

443. The only direct restriction on the power of Congress, in relation to the subject, is contained in an amendment of the Constitution, which provides that "no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by Law."

444. The Union of the States under the National Constitution, removes every pretext for a Military establishment which could prove dangerous; and the distance of this Continent from the powerful Nations of Europe, affords a security that the Government will never be able to persuade or delude the People into the support of large and expensive peace establishments.

445. The Union itself is, moreover, the principal security against danger from abroad, as well as against internal commotion or domestic usurpation; whilst it is the only source of the Maritime strength of the Nation; and the necessity of a Navy, and the proof of its efficacy as an arm of National defence, have removed the scruples which at one period prevented due attention to encouraging it in time of peace.

446. *The Power of regulating the Militia*, and of commanding its services in times of insurrection or invasion, are incident to the duties of superintending the common defence and internal tranquillity of the Union.

447. The advantages of uniformity in the organization and discipline of the Militia, could only be attained by expressly confiding its regulation to the General Government; and it was essential that Congress should have authority not only "to provide for calling forth the Militia to execute the Laws of the

Union, suppress insurrections, and repel invasions;" but also "to provide for organizing, arming, and disciplining the Militia, and for governing such parts of them as may be employed in the service of the United States."

448. The President being constituted Commander in Chief of the Militia when called into the actual service of the Union, is authorized by Law, in case of invasion, or of imminent danger thereof, to call forth such numbers of them, most convenient to the scene of action, as he may judge necessary.

449. The Militia so called out are subject to the rules of war, and the Law imposes a fine upon every delinquent, to be adjudged by a Court-Martial, composed of Militia Officers only, and held and conducted in the manner prescribed by the Articles of War.

450. The manner in which the Militia are to be organized, armed, disciplined, and governed, is prescribed by Law; and provision is made for drafting, detaching, and calling forth the State *quotas*, when required by the President.

451. The Act of Congress renders the President the sole and exclusive judge of the existence of the exigency in which the Constitution authorizes the Militia to be called forth into the service of the United States; and his decision is conclusive upon all other persons.

452. This construction necessarily results from the nature of the power given by the Constitution, and from the manifest object contemplated by the Act of Congress.

453. The power itself is to be exersised upon sud-

den emergencies, and under circumstances which may affect the existence of the Union, and a prompt and unhesitating obedience is indispensable to the complete attainment of the object.

454. As the power of regulating the Militia, and of commanding its services in times of insurrection and invasion, are incident to the duty of superintending the common defence and internal tranquillity of the Union, that power must be so construed, with respect to the modes of its exercise, as not to defeat the end in view.

455. If the Governor of a State, or other superior officer, had a right to contest the orders of the President, upon their own doubts as to the existence of the exigency, it would be equally the right of every inferior officer and soldier; and an act done by any person in furtherance of such orders, would subject the party to a civil suit, in which his defence would rest upon his ability to establish, by competent proof, the facts upon which the exigency was alleged to have arisen.

456. This would be subversive of military discipline, and expose the best intentioned persons to the chances of a ruinous litigation; and in many instances, the evidence upon which the President might decide, would not constitute technical proof; or its disclosure might reveal important secrets of State which the public safety might require to be concealed.

457. The President being constituted the judge of the existence of the exigency, is bound to act according to his belief of the facts; and if he decides to call forth the Militia, and his orders for this purpose are in conformity with the provisions of the Law, it follows as a necessary consequence, that every subordinate officer is bound to obey them.

458. Whenever an Act of Congress gives to the President a discretionary power, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts; and it is not considered a valid objection, that such power may be abused; for there is no power which is not susceptible of abuse.

459. The remedy for the abuse of this and all other powers, is afforded by the Constitution itself; and in a free Government such dangers must be remote, since, in addition to the high qualities which the Chief Executive Magistrate must be presumed to possess, the frequency of elections, the watchfulness of the immediate representatives of the People, and the responsibility of the President, are all the securities which can be useful to guard against usurpation or tyranny.

460. Nor is it necessary that it should appear that the particular exigency in fact existed, upon the belief of which the President may have exercised his discretion in the execution of this power; for the same principles are not applicable to the delegation and exercise of the power entrusted to the Supreme Executive of the Nation, for great political purposes, as are applied to subordinate agents, acting under the most narrow and special authority.

461. When the President exercises an authority confided to him by Law, the presumption is that it is exercised in pursuance of the Law; for every public officer is presumed to act in pursuance of his duty, until the contrary be shewn; and this rule applies with greater force to the Chief Magistrate of the Union.

462. If the non-existence of the exigency could be

averred and shewn by the delinquent party, it would then be liable to be inquired into as a fact by a jury; and thus the legality of the order of the President would depend, not on his own judgment as to the fact, but upon the decision of a Jury upon such proofs of its existence as could be submitted to them.

463. The orders of the President are to be given to the Chief Executive Magistrate of the State, or to any Militia officer he may think proper; and neglect or refusal to obey such orders, is declared to be a public offence, subjecting the offender to trial and punishment by a Court-martial.

464. The Militia, when called into the service of the United States, are not considered as being in that service, until they are mustered at the place of *rendezvous*; and until that be done, a State has a right, concurrent with the United States, to punish their delinquencies.

465. After the Militia have been actually mustered at the place of *rendezvous*, into the service of the United States, their character changes from State, to National Militia; and the authority of the General Government over them becomes exclusive.

466. *The Power of levying taxes, and borrowing money*, is properly included in the same class with the power of providing for the national defence; as the latter is specified in the Constitution as one of the leading objects of vesting the power of taxation in Congress.

467. The support of the National forces, the expense of raising troops, of building and equipping fleets, and all other expenditures in any wise connected with military and naval operations, are not,

however, the only objects to which the jurisdiction of Congress with respect to revenue, extends.

468. The terms of the Constitution by which the power is conferred, embrace a provision for the support of the civil establishment of the United States, for the payment of the National debts, and, in general, for all those objects for which the general welfare requires the disbursement of money from the National Treasury.

469. The necessity of vesting this power in the Government of the United States, is obvious; as no Government can be supported without possessing the means within itself of procuring a regular and adequate supply of revenue, so far as the resources at its command will permit.

470. There must of necessity be conferred on every Government, a power of taxation in some shape or other; and in the Government of the United States, it is co-extensive with the purposes of the Constitution.

471. Congress is accordingly invested with power "to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence, and general welfare;" and it is also invested with a distinct power "to borrow money on the credit of the United States."

472. The power of taxation is qualified, in its exercise, by a provision requiring "that capitation and other direct taxes, shall be apportioned among the several States according to their respective numbers, as ascertained by the census, and determined by the rule for the apportionment of Representatives in Congress."

473. This power is further qualified by a provision that "all duties, imposts, and excises, shall be equal throughout the United States;" and it is absolutely restricted by a prohibition upon Congress, to "lay any tax or duties on articles exported from the United States."

474. The Constitution does not define the exclusive subjects of national taxation; although in some instances an interference with many of the sources of State revenue, must have been foreseen, from the exercise of a concurrent power in the General Government.

475. But it was better that a particular State should sustain this inconvenience, than that the general necessities should fail of supply; and it was manifestly intended that Congress should possess full power, subject only to the specified qualifications and restrictions, over every species of taxable property.

476. The term *Taxes* is general; and is used in the Constitution to confer a plenary authority on Congress, in all cases of taxation to which the powers vested in the Union extend.

477. The most familiar general division of taxes, is into *direct* and *indirect*; and although the Constitution designates only the former species, it necessarily implies the existence of the latter.

478. The general term, then, includes—
1st. Direct taxes, which are properly capitation taxes, and taxes upon Land.
2d. Duties, imposts, and excises; and,
3d. All other taxes of an indirect operation.

479. *A direct Tax*, operates and takes effect inde-

pendently of consumption or expenditure; whilst *indirect Taxes* affect expense or consumption; and the revenue arising from them is dependent thereupon.

480. The practical importance of this distinction, arises from the different modes in which the different species of taxes are levied; direct taxes being required to be apportioned amongst the several States, according to the respective numbers of their inhabitants; whilst indirect taxes, not admitting of this apportionment, are directed to be "uniform throughout the United States," on the articles subjected to taxation.

481. If Congress thinks proper to raise a sum of money by direct taxation, the *quota* of each State must be fixed according to the *census*, and in conformity with the rule of apportionment prescribed by the Constitution; but if indirect taxation be resorted to, the same duty must be imposed throughout the Union on the article liable to it, whether its quantity or consumption be greater or less in the respective States.

482. The Constitution considers no taxes as direct taxes, but such as may be laid in proportion to the census, and the rule of apportionment is held not to apply to *a tax on carriages;* nor could such a tax be laid by that rule, without great inequality and injustice.

483. A tax on carriages was accordingly considered as an indirect tax on expense or consumption, and as included within the power to lay duties; and the better opinion seems to be, that the direct taxes contemplated by the Constitution are only two, viz; a capitation or poll-tax, and a tax on land.

484. Although duties must be uniform, and direct

taxes apportioned according to numbers, yet the provision of the Constitution, with respect to the latter, does not limit the power of Congress to the imposition of taxes upon the inhabitants of the several States only; but that power extends equally to all places over which the National Government has jurisdiction, and applies to the District of Columbia, and to the organized Territories, although their inhabitants are not represented in Congress.

485. The power of Congress to exercise exclusive jurisdiction over the District of Columbia, and to govern the Territories of the United States, includes the power of taxing their inhabitants; but Congress is not bound absolutely to exercise that power; and may, in their discretion, extend a tax, or not, to all the Territories, as well as to the States.

486. A direct tax, if laid at all, must be laid on every State conformably to the census; and therefore Congress has no power to exempt a State from its due share of the burthen; and although it is not under the same necessity of extending the tax to the District of Columbia, or to the National *Territories*, yet, if the tax be actually extended to either of them, the same constitutional rule of apportionment, must be applied in its imposition.

487. The construction which allows Congress, in the exercise of its discretion, to omit extending a tax to those portions of the Union which are not directly represented in the National Legislature, is not only the most convenient interpretation, as the expense of collecting a direct tax in the more remote Territories might exceed its amount, but it enables Congress to avoid the imputation of violating, even in appearance, the fundamental principle which regards taxation and representation as inseparable.

488. No State can, "without the consent of Congress, lay any tonnage duty, or imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection Laws," and the net produce of all duties and imposts laid by any State on imports or exports, are declared to "be for the use of the Treasury of the United States," and all such State Laws are subject to the revision and control of Congress.

489. Under this power, "to lay and collect duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States," Congress has, from the earliest period of the Government, claimed, and exercised authority to lay duties for the purpose of encouraging and protecting articles of domestic produce or manufacture, as well as for raising a revenue on imports.

490. But this authority has been questioned, upon a construction of the Constitution, which excludes "the general welfare" as one of the objects for which this branch of the power of taxation was surrendered by the several States; and denies that it can be applied to any other purposes than that of paying the debts, supporting the civil and military establishments of the Union, and of carrying into effect the powers specifically enumerated in the Constitution, and vested by it in Congress.

491. It is, nevertheless, a sound rule of construction, and universal in its application, that the different parts of the same instrument ought to be so expounded, as to give effect, if possible, to the whole, and to every part susceptible of meaning.

492. As it cannot be presumed that the term "ge-

neral welfare," was introduced into the Constitution for no purpose whatever, those words cannot be excluded from all share in the meaning, unless they are incapable of bearing any signification in the connexion in which they are used, or of being reconciled either to the remainder of the clause of which they form a part, or to other parts of the Constitution.

493. If objects capable of being embraced by these general expressions, cannot be deemed to be comprised amongst the more definite objects previously or subsequently enumerated, it must be intended that other objects than either of these, were intended to be accomplished by means of the taxing power; and that such further objects comprehend every thing to which "the general welfare" requires this power of Congress to be applied, as the direct means of effecting the end proposed.

494. Unless Congress have power to afford this encouragement and protection, by the means in question, such power exists no where in the Union; as the State Legislatures cannot impose duties on articles of importation without the consent of Congress, and have surrendered to Congress the exclusive power of regulating commerce with foreign nations.

495. Whether "the general welfare" be, in fact, promoted by imposing duties for the encouragement and protection of domestic manufactures, is a question of National policy, involving facts and opinions from their nature not cognizable in Courts of Justice, and depending for their determination upon the sound exercise of Legislative discretion.

496. Whatever may be the opinions of enlightened men, as to the policy of protecting domestic manufactures, or as to the question, whether "the general

welfare" be indeed promoted by the imposition of duties on articles of foreign importation; those opinions must be founded on views of national policy, and principles of political economy, upon which none but the National Legislature can, for any practical purpose, authoritatively decide.

497. Unless Congress had authority to decide on the facts and principles upon which the exercise of its Legislative discretion depends, those facts and principles would be subject to judicial examination, and a construction might be given to the Constitution, not merely by the judgment of a Court upon the question of law, whether Congress has power "to lay duties to provide for the general welfare," but, upon the opinion of a Jury upon the question of fact, whether the "general welfare" was, upon sound principles of public policy, actually promoted by protecting duties.

498. The objects to which the surplus revenue arising from protecting duties are applied, unless designated in the Law authorizing them to be levied and collected, can have no bearing on the general question of the Constitutionality of Laws, providing merely for their being levied and collected.

499. When collected and paid into the Treasury of the United States, the proceeds of such duties are at the disposal of Congress; and as "no money can be drawn from the Treasury, but in consequence of appropriations made by Law," no question as to the constitutionality of the objects to which that portion of the public revenues may be applied, can arise until a Law be proposed for their specific appropriation.

500. Neither is an inequality in the operation of protecting duties, contrary to the provision of the

Constitution, which requires all duties to be uniform throughout the United States; as the uniformity required is in the imposition, and not in the operation, of the duties; and whatever may be the fact, in regard to their operation, it must depend on the expense and consumption of individuals, which are beyond the control of Legislation.

501. *The power of borrowing money on the credit of the United States,* is conferred on the National Government in general terms; but as the public credit of the Union must depend on the financial resources placed at its command, this power must have been intended to be exercised in anticipation of the National resources, and must consequently be subject to the same restrictions, as to its objects, to which the power of taxation is limited and confined.

## CHAPTER II.

### OF THE POWERS VESTED IN THE GENERAL GOVERNMENT, FOR REGULATING INTERCOURSE WITH FOREIGN NATIONS.

502. The powers vested in the General Government for regulating intercourse with foreign nations, consist

1st. Of the Powers to make Treaties, and to send and receive Ambassadors, and other public Ministers and Consuls.

2d. Of the Power to regulate foreign Commerce, including a Power to prohibit, after a certain period, now elapsed, the importation of slaves; and,

3d. Of the Power to define and punish piracies, and felonies committed on the high seas, and offences against the Law of Nations.

503. The Powers to make Treaties, and to send and receive Ambassadors, are essential attributes of National sovereignty; and of that international equality which the interests of every sovereignty require it to preserve.

504. As Treaties existed between the United States and foreign Nations, at the adoption of the Constitution, it was proper to vary its terms in regard to *Treaties*, from its general expressions relative to *Laws*, of the United States; and to declare, in reference to the former, that "Treaties, *made, or which should be made*, under the authority of the United States," should constitute a part of the Supreme Law of the land.

505. These expressions were considered as including both Treaties made previously to the Constitution, and those which might be subsequently negotiated; and it has accordingly been adjudged, that the clause not only applies to Treaties subsisting at the ratification of the Constitution, as well as to those since concluded; but that it effectually repeals so much of all State Constitutions and Laws as are repugnant to such previously existing Treaties.

506. More general and extensive terms are used, also, in vesting the power with respect to Treaties, than in conferring that relative to Laws; and whilst the latter is laid under several restrictions, there are none imposed on the exercise of the former, notwithstanding it is committed to the President and Senate, in exclusion of the House of Representatives.

507. Although the President and Senate are invested with this high and exclusive control over all those subjects of negotiation with foreign Nations, which may eventually affect important domestic in-

terests, yet it would have been impossible to have defined a power of this nature; and therefore general terms only were used in conferring it.

508. These general expressions, however, ought to be scrupulously confined to their legitimate signification; and in order to ascertain whether the execution of the Treaty-making power can be supported in any given case, the principles of the Constitution, from which the power proceeds, must be carefully applied to it.

509. The power must be construed in subordination to the Constitution; and, however in its operation it may qualify, it cannot supersede or interfere with, any other of its fundamental provisions; nor can it be so interpreted as to authorize the destruction of other powers given in that instrument.

510. A Treaty to change the organization of the Government, or annihilate its sovereignty, or overturn its Republican form, or to deprive it of its Constitutional powers, would be void; because it would defeat the will of the People, which it was designed to fulfil.

511. A Treaty, in its general sense, is a compact entered into with a foreign Power, and extends to all matters which are usually the subject of compact between independent nations.

512. It is, in its nature, a contract, and not a Legislative act; and does not generally effect, of itself, the objects purposed to be accomplished by concluding it; but requires to be carried into execution by some subsequent act of sovereign power by the contracting parties, especially in cases where it is intended to operate within their respective territories.

513. In the United States, however, it is settled by a decision of the Supreme Court, that as the Constitution declares a Treaty to be the "Law of the Land," it is to be regarded in Courts of Justice as equivalent to a Legislative Act, whenever it operates of itself, without the aid of any Legislative provision.

514. But when the terms of the stipulation import an *executory* contract, the Treaty refers for its execution to the political, and not to the Judicial department of the Government; and Congress must pass a Law in execution of the contract, before it can become a rule for the Courts.

515. The Constitution does not distinctly declare whether Treaties are to be held superior to Acts of Congress, or whether Laws are to be co-equal or superior to Treaties; but the representation held forth to foreign Powers is, that the President, by and with the consent of the Senate, has power to bind the Nation in all legitimate compacts; and if pre-existing Laws, contrary to a Treaty, could be abrogated only by Congress, this representation would be fallacious.

516. The immediate operation of a Treaty must therefore be, to overrule all existing Legislative Acts incompatible with its provisions; as otherwise the public faith would be subjected to just imputation and reproach, and all confidence in the national engagements would be destroyed.

517. This is not inconsistent with the power of Congress to pass subsequent Laws, qualifying, altering, or wholly annulling a Treaty; for such an authority, in certain cases, is supported on grounds wholly independent of the power of making Treaties, and is incident to the power of declaring war.

518. The exercise of such a right may become necessary to the public welfare and safety, from measures of the party with whom the Treaty was made, contrary to its spirit, or in open violation of its letter; and on such grounds alone can this right be reconciled, either with the provisions of the Constitution, or the principles of public Law.

519. All Treaties, as soon as finally ratified by the competent authorities, become of absolute efficacy; and as long as they continue in force, are obligatory upon the whole Nation.

520. If a Treaty require the payment of money to carry it into effect, and the money can only be raised or appropriated by an Act of the Legislature, the existence of the Treaty renders it morally obligatory on Congress to pass the requisite Law; and its refusal to do so, would amount to a breach of the public faith, and afford just cause of war.

521. That department of the Government, which is entrusted by the Constitution with the power of making Treaties, is competent to bind the National faith at its discretion; for the power to make Treaties must be co-extensive with the national exigencies, and necessarily involves in it every portion of the national sovereignty, of which the co-operation may be necessary to give effect to negotiations and contracts with foreign Nations.

522. If a Nation confer on its Executive department, without reserve, the right of treating and contracting with other Sovereignties, it is considered as having invested it with all the power necessary to make a valid contract; and that it is competent to alienate the public domain and property by Treaty; because that department is the organ of the Nation

in making such contracts; and such alienations are valid, because they are made by the deputed assent of the Nation.

523. The fundamental Laws may withhold from the Executive department the power of alienating what belongs to the State; but if there be no express provision to that effect, the inference is, that the Constitution has confided to the department charged with the power of making Treaties, a discretion commensurate with all the great interests and necessities of the Nation.

524. A power to make Treaties of Peace, necessarily implies a power to settle the terms on which they shall be concluded; and foreign States could not deal safely with the Government, upon any other presumption.

525. That branch of the Government, which is entrusted thus generally with authority to make valid Treaties of Peace, must, of course, have power to bind the Nation by the alienation of part of its territory, whether that territory be already in the occupation of the enemy, or remain in possession of the Nation, or whether the property be public or private.

526. Individual rights acquired by war, and vested rights of the citizens, may be surrendered by Treaty for national purposes, as it is a clear principle of National Law, that private rights may be sacrificed for the public safety; but the Government is bound to make compensation and indemnity to the individuals whose rights are surrendered for the public benefit.

527. Treaties of every kind, when made by the competent authority, are not only to be observed with

the most scrupulous good faith, but are to receive a fair and liberal interpretation; and their meaning is to be ascertained by the same rules of construction which are applied to the interpretation of private contracts.

528. If a Treaty should be, in fact, violated by one of the contracting parties, by proceedings incompatible with its nature, or by an intentional breach of of any of its articles, it rests with the injured party alone to pronounce it broken.

529. The Treaty in such cases is not *absolutely void*, but *voidable* at the election of the injured party; and unless he choose to consider it void, it remains obligatory, as he may either waive or remit the infraction, or demand a just satisfaction.

530. But the violation of any one article, is a violation of the whole Treaty; for all the articles are dependent on each other, each of them is deemed a condition of the rest; and the breach of a single article overthrows the Treaty, if the injured party so elect.

531. This consequence may, however, be prevented by an express provision in the Treaty itself, that if one article be broken, the others shall nevertheless continue in full force; and in such a case it would not be competent for Congress to annul the Treaty on the ground of the breach of a single article.

532. The annulling of a Treaty by an Act of the Legislative Power under the circumstances in which such a measure is justifiable, or its termination by war, does not divest rights of property acquired under it; nor do Treaties in general become *ipso facto* extinguished by war between the parties: those

articles which stipulate for a permanent arrangement of territorial and other national rights, are at most suspended during the war, and revive at the peace, unless waived by the parties, or new or repugnant arrangements are made in a new Treaty.

533. *The Power to regulate Commerce with foreign Nations*, is intimately connected with that of concluding Treaties, especially with those of Commerce and Navigation; and its exercise is with equal propriety submitted to the National Government.

534. From the very nature of this power, it must be exclusive; for if the several States had retained the right of regulating their own Commerce with foreign Nations, each of them might have pursued a different system; mutual jealousies, rivalries, restrictions, and prohibitions would have ensued, which a common superior alone could prevent, and at the same time command by its authority that confidence of foreign Nations which is necessary to the negotiation of foreign Treaties.

535. The general power of Congress to regulate Commerce, is not restricted to the mere buying and selling, or exchanging, of merchandise and commodities, but includes Navigation, as well as commercial intercourse in all its branches, and extends to all vessels by whatsoever force propelled, and to whatsoever purposes applied.

536. The word "Commerce," as used in the Constitution, must have been understood, at its adoption, to include "Navigation;" as the power over both, in conjunction, was a primary object in forming the new Government; and in this comprehensive sense the term has always been understood, and actually interpreted, both by the Legislative and Judicial departments of the Government.

537. Unless it were so used and understood, the National Government would have no direct power over Navigation; and could make no Laws prescribing the requisites to constitute "American Vessels," or requiring them to be navigated by "American Seamen;" which powers have been exercised from the commencement of its action, with the universal consent of the States, and the universal understanding that they were "commercial regulations."

538. The power to regulate Commerce, thus understood, extends to every species of commercial intercourse between the United States and foreign Nations, and amongst the States of the Union, and the Indian tribes.

539. Although, in regard to the several States, the power was not intended to comprehend that Commerce which is completely internal, yet, in regulating Commerce with foreign Nations, the power of Congress, in reference to that subject, is not limited by the jurisdictional boundaries of a State.

540. The Commerce of the United States with foreign Nations, is the Commerce of the whole Union; and each State or District has an equal right to participate in it, by means of the navigable streams which penetrate the country in all directions, and pass through the interior of almost every State in the Union.

541. The power of Congress to regulate foreign Commerce, must be exercised wherever the subject exists; and as a foreign voyage may commence and terminate at a port within the same State, this power of Congress may be exercised *within a State.*

542. The power to prescribe the rule by which

Commerce is to be governed, like all other powers vested in Congress, is complete in itself, and may be exercised to its utmost extent, without any limitations but such as are prescribed in the Constitution.

543. As none of the restrictions upon the powers of Congress, which are expressed in the Constitution, affect the power in question; and as the sovereignty of Congress, though limited to specific objects, is plenary in regard to those objects; the power over Commerce is vested in the Government of the Union, as absolutely as it would exist in the Government of a single State, if the Union had not been formed, and the State Constitution had contained no further restrictions on the Legislative Power than are contained in the Constitution of the United States.

544. The discretion and wisdom of Congress, the identity of its members with the People of the several States, their dependence on their constituents, and their responsibility for misconduct in office, are in this case, as in many others, the only restraints upon which the community has relied to secure it from the abuse of the power; and these comprehend all the securities upon which the People must often of necessity rely in a Representative Government.

545. The power of Congress then comprehends Navigation within the limits of every State in the Union, so far as that Navigation may be in any manner connected with "Commerce with foreign Nations, or among the several States, or with the Indian tribes."

546. Although the individual States are important parts of the Federal system, and have retained a concurrent power of Legislation over many subjects of National jurisdiction; yet when a State proceeds

to regulate any but its purely internal Commerce, it exercises the identical power which is granted to the Union, and does the very thing which Congress alone is authorized to do.

547. As the power of Congress to regulate Commerce extends to Navigation carried on in vessels exclusively employed in carrying passengers, whether propelled by steam, or by the instrumentality of wind and sails, on waters wholly within a State, but which are navigable from the ocean, an exclusive privilege of Steam Navigation upon such waters claimed under a State, was judicially held to conflict with an authority to navigate the same waters, derived from the Laws of Congress; and so far as this interference extended, the State Law was declared void, as repugnant to the Federal Constitution.

548. As the power of regulating Commerce reaches the interior of a State, and may there be exercised, it is capable of authorizing the sale of those commodities which it introduces; because the efficacy of the power would be incomplete, if it ceased to operate at the point where the continuance of its operation is indispensable to its value.

549. The power to allow importation would be nugatory, if unaccompanied by the power to authorize the sale of the thing imported; for sale is the object of importation, and an essential ingredient in that Commercial intercourse of which importation constitutes a part, and as indispensable to the existence of that intercourse, as importation itself.

550. The right of sale, as well as the right to import, being therefore considered as involved in the power to regulate Commerce, Congress has a right, not only to authorize importation, but to authorize the importer to sell.

551. An Act of a State Legislature, requiring wholsale importers and sellers of foreign goods to obtain a licence from the State, and to pay a sum of money for the privilege of selling, was consequently held to be void, as repugnant not only to that provision of the Constitution which restricts a State from laying duties on imports, but to that which invests Congress with the power "to regulate Commerce."

552. The power to regulate foreign Commerce extends to the regulation and government of seamen on board merchant ships belonging to citizens of the United States; to conferring privileges upon ships built and owned in the United States; to quarantine, pilotage, and embargo Laws; to wrecks of the seas; the construction of light-houses; the placing of buoys and beacons; the removal of obstructions to Navigation in creeks, rivers, sounds, and bays; to the establishment of securities to Navigation against inroads of the ocean; and to the designation of particular ports of entry and delivery for the purposes of foreign Commerce.

553. The regulation of Commerce has also been employed for the purposes of Revenue; of prohibition, retaliation, and commercial reciprocity; to encourage domestic Navigation; and to promote the shipping and mercantile interests by bounties, discriminating duties, and special preferences; and sometimes to regulate intercourse with a view to mere political objects.

554. It seems to be admitted that Congress may incidentally, in its arrangements for countervailing foreign restrictions, encourage the growth of domestic manufactures; but whilst, on the one hand, it is denied that Congress has a right permanently to prohibit any importations unreasonably for the purpose

of fostering an interest in favour of which it has no power directly to interfere; it is insisted, on the other, that Congress does possess Constitutional power to encourage and protect manufactures, by appropriate regulations of Commerce.

555. The terms of the Constitution, in relation to this power, in connection with the power of laying and collecting duties, are supposed to be sufficiently large to embrace the protection of domestic industry; and both powers have been applied in practice to the encouragement of manufactures as well as of agriculture, from the commencement of the Government.

556. If Congress does not possess the power to encourage domestic manufactures, by regulations of Commerce, that power must, as has appeared, be annihilated for the whole Union; but as the People of the several States have made a voluntary surrender of the means essential to the exercise of that power, it seems more reasonable to conclude that the power exists in the National Government, than that it does not exist at all.

557. *The Power of prohibiting the importation of Slaves* into the United States after the year 1808, and of imposing an intermediate duty on their importation, is included in the power to regulate Commerce, as the restriction which postponed its exercise, arose from an express exception in the grant of the general power.

558. This power was fully exercised by Congress as soon as the limitation permitted, and in time to afford the first example of the abolition of a species of traffic which had long been the opprobrium of modern policy; and the interdiction has been fol-

lowed up, by declaring the Slave trade piracy, and rendering it punishable with death when pursued by citizens of the United States.

559. *The Power to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations*, is substantively and separately vested in Congress; although, as to the former objects, it seems unavoidably incident to the power to regulate foreign Commerce; and as to the latter object, it might be implied from the authority of the National Government to declare war and make Treaties.

560. The power to *define*, as well as *punish*, seems rather applicable to felonies and offences against the Law of Nations, than to piracies; as piracy is well defined by the Law of Nations to be *robbery*, or a forcible depredation on the high seas, without lawful authority; and by the *high seas* is understood not only the ocean out of sight of land, but waters on the sea-coast beyond the boundary of low water mark.

561. The term *Felony*, in relation to offences on the high seas, is necessarily indeterminate, as it is a term of rather loose signification in the Common Law, from which it is derived; nor is it used in the criminal jurisdiction of the Admiralty Courts in the same technical sense it bears at Common Law.

562. Offences against the Law of Nations are not completely ascertained and defined by any particular code recognized by the common consent of Nations; so that with respect to them, as well as to felonies, there was a peculiar fitness in granting to Congress the power to define, as well as to punish.

563. In executing the power to define piracy, it

was not necessary for Congress to insert in the Statute a definition of the crime in terms; but it was sufficient to refer for its definition to the Law of Nations, as it is there defined with reasonable certainty, and does not depend on the particular provisions of any municipal code, either for its definition or punishment.

564. Pirates have been regarded by all civilized nations as enemies of the human race, and the most atrocious violators of the universal law of society; and they are accordingly every where punished with death.

565. Every Nation has a right to attack and exterminate pirates without a declaration of war; for although they may form a loose and temporary association amongst themselves, and re-establish in some degree those laws of justice which they have violated with the rest of the world; yet they are not considered as a National body, or entitled to the laws of war as belonging to the community of Nations.

566. Pirates acquire no rights by Conquest or the Law of Nations; and the municipal Laws of every country authorize the true owner to reclaim his property taken by pirates, wheresoever it can be found; for those Laws do not recognize any title to be derived from an act of piracy.

567. Congress has the right to pass laws to punish pirates, though they be foreigners, and may have committed no particular offence against the United States; and for the purpose of giving jurisdiction, it is of no importance on whom, or where, a piratical offence has been committed.

568. In executing the Power of providing for the

punishment of piracy, as defined by the Law of Nations, Congress, in conformity with that Law, has declared that it shall be death; and has, moreover, enacted that if any person concerned in any particular enterprize, or belonging to any particular crew, shall land and commit robbery on shore, such offender shall be adjudged a pirate; in which respect the Statute seems also, to be merely declaratory of the Law of Nations.

569. Piracy under the Law of Nations, is an offence against all Nations, and punishable by all; and a pirate, who is such by that law, may be punished in any country where he may be found; but the municipal Laws of any country may declare any offence committed on board its own vessels to be piracy, and it will be punishable exclusively by the Nation which passes such Statute.

570. The Act of Congress, by which certain offences are declared to be piracy, which are not so by the Law of Nations, was intended to punish them as offences against the United States, and not as offences against the human race; and such an offence, committed by a person not a citizen of the United States, on board of a vessel belonging exclusively to subjects of a foreign State, is not piracy under the Statute, or punishable in the Courts of the United States.

571. The offence in such cases must be left to be punished by the Nation under whose flag the vessel sails, and whose particular jurisdiction extends to all on board; for it is a clear and settled principle, that the jurisdiction of every Nation extends to its own citizens, on board of its own public and private vessels at sea.

572. But murder or robbery committed on the

high seas, by persons on board of a vessel not at the time belonging to any foreign power, but in possession of a crew acting in defiance of all law, and acknowledging obedience to no Government, is within the act of Congress, and punishable in the Courts of the United States.

573. For although the Statute does not apply to offences committed against the particular sovereignty of a foreign power, and on board of a vessel belonging at the time, in fact as well as of right, to a subject of a foreign State, and in virtue of such property subject to his control; yet it extends to all offences committed against all Nations, by persons who, by common consent, are equally amenable to the Laws of all Nations.

574. In pursuance of this principle, the moment a vessel assumes a piratical character, she loses all claim to National character, whatever it may have been; and the crew, whether citizens or foreigners, are equally punishable under the Statute for acts declared by it to be piracy.

575. The Laws of Congress declare those acts piracy in a citizen of the United States when committed on a citizen, which would only be belligerent acts if committed on a foreigner; and a citizen of the United States, who offends against the Government or its citizens, under colour of a foreign commission, is punishable in the same manner as if he had no commission.

576. The acts of an alien, under the sanction of a national commission, may be hostile, and his Government responsible for them, but they are not regarded as piratical; and this rule extends to the Barbary Powers, who are now regarded as lawful Powers, and not as pirates.

577. *Felony*, when committed on the high seas, in effect amounts to piracy; and has, to a considerable extent, been so declared by Congress; who, in pursuance of the authority vested in them by the Constitution, have enacted that any person on the high seas, or in any open roadstead or bay, where the sea ebbs and flows, committing the crime of robbery, in and upon any vessel, or its crew or lading, shall be adjudged *a pirate*.

578. The power to define and punish piracy and felonies on the high seas, is exclusive in its nature; but it has been doubted whether the power to punish other offences against the Law of Nations, ought to be considered as exclusively vested in Congress, on the ground that the Law of Nations forms a part of the Common Law of every State of the Union, and violations of it may be committed on land, as well as at sea.

579. The jurisdiction of the several States is, however, superseded in regard to those offences against the Law of Nations which are committed at sea; but it does not seem necessarily to follow, that it is also superseded in regard to those which are committed on shore.

580. Offences of the latter description are of various kinds, and the power to define and punish them is with great propriety given to Congress; and so far as they have been defined by the Acts of Congress, they may be said to arise under the Constitution and Laws of the United States, and to be finally, if not exclusively, cognizable under their authority.

581. But there are some such offences which are not enumerated in the Acts of Congress; and if the doctrine be sound, that the criminal jurisdiction of

the Union is confined to cases expressly provided for by Congress, either those violations of the Law of Nations of this description, of which the punishment remains unprovided for by Congress, must go unpunished, or the State Courts must entertain jurisdiction of them.

582. The United States being alone responsible to foreign Nations for all that affects their mutual intercourse, it rests with the National Government to declare what shall constitute offences against the Law regulating that intercourse, and to prescribe suitable punishments in case of their commission.

583. But if cases arise for which no provision has been made by Congress, both the National and State Courts, within the spheres of their respective jurisdictions, are thrown upon those general principles which, being enforced by other Nations, those Nations have a right to require to be applied and enforced in their favour.

584. The offences falling more immediately under the cognizance of the Law of Nations, are, besides piracy, *violations of Safe Conducts*, and *infringements of the rights of Ambassadors and other foreign Ministers.*

585. A safe conduct, or *passport*, contains a pledge of the public faith that it shall be duly respected, the preservation of which is essential to the character of the Government; and Congress, in furtherance of the general sanction of public Law, has provided that persons violating safe conducts shall be subject to fine and imprisonment.

586. The same punishment is provided for persons who infringe the Law of Nations, by offering vio-

lence to Ambassadors, or other public Ministers; or by being concerned in prosecuting or arresting them; and the process whereby their persons, or those of their domestics, may be imprisoned, or their goods seized, is declared void.

587. The policy of these Laws regards such proceedings against foreign Ministers as highly injurious to a free and liberal communication between different Governments, and mischievous in their consequences to any Nation; as they tend to provoke the resentment of the Sovereign whom the Minister represents, and to bring upon the country in which he resides the calamity of war.

588. *The Slave trade* is now considered as a piratical trade, not indeed as absolutely prohibited by the Law of Nations, but condemned as such by our own Law, and the Laws of several other civilized Nations, as well as by the general principles of justice and humanity.

## CHAPTER III.

### OF THE POWERS VESTED IN THE GENERAL GOVERNMENT, FOR THE MAINTENANCE OF HARMONY AND PROPER INTERCOURSE AMONGST THE STATES.

589. The authority vested in the General Government, for the maintenance of harmony and proper intercourse amongst the States, includes the particular restraints on the authority of the States, and certain powers vested in the Judicial department. But the former are reserved for a distinct head of consideration, and the latter have already been reviewed in examining the structure and organization of the Government.

590. The remaining Powers comprehended under this head, are the following, viz:

1. "To regulate Commerce amongst the several States, and with the Indian tribes."
2. "To establish post-offices and post-roads."
3. "To coin money; to regulate the value thereof; and to fix the standard of weights and measures."
4. "To provide for the punishment of counterfeiting the securities and public coin of the United States."
5. "To establish an uniform rule of naturalization throughout the United States."
6. "To establish uniform rules on the subject of bankruptcies;" and,
7. "To prescribe, by penal Laws, the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States."

591. Without the supplemental power to regulate Commerce amongst the States, the primary and indispensable power of regulating foreign Commerce, would have been incomplete and ineffectual.

592. A material object of this power was to secure those States which import and export through other States, from unjust contributions levied on them by the latter; for, had the several States been left at liberty to regulate the trade between each other, articles of produce and merchandize might have been subjected, during their transit, to duties which would eventually have fallen on the growers or manufacturers of the one, and the consumers of the other.

593. The Power "to regulate Commerce among the several States," does not extend to that Com-

merce which is completely internal; and, comprehensive as are the terms in which it is conferred, it is, nevertheless, restricted to that Commerce which concerns more States than one.

594. For the genius and character of the Government evince that its action is to be applied to all the external concerns of the Nation, and to the internal concerns which affect the States generally; but not to those which are completely within a State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing any of the general powers of the National Government.

595. The completely internal Commerce of a State is therefore reserved for the State itself; but as the power of Congress, in regulating foreign Commerce, does not stop at the jurisdictional lines of the States, so the power to regulate Commerce amongst the States, is not limited by State boundaries.

596. For, not only do waters communicating with the ocean penetrate into the interior, and pass in their course through the several States; but in many cases there are waters in and upon the boundaries of several of the States, which, though not navigable to the sea, afford means of Commercial intercourse between those States, and furnish occasions to Congress for the exercise of the power in question.

597. This power may be exercised wherever the subject exists; and if the means of Commercial intercourse exist within a State;—if, for instance, a coasting voyage may commence or terminate within a State, then the power of Congress to regulate Commerce amongst the States, may be exercised *within a State.*

598. As the States which join each other, are separated merely by a mathematical line, a trading expedition between them cannot commence and terminate without the limits of either; and as other States lie between two States remote from each other, a trading intercourse between the latter, must commence in one, terminate in another, and pass through at least a third.

599. Hence Commerce amongst the States must of necessity be Commerce within the States; and in the regulation of the Indian trade, the action of the Law is chiefly within individual States; whilst in this case, as well as with respect to Commerce amongst the States, the power of Congress being co-extensive with the subject on which it acts, cannot be stopped at the external boundary of the State, but must enter its limits, and be exercised within its territorial jurisdiction.

600. The power of Congress to regulate Commerce among the States, extends to regulating Navigation, and to the coasting trade and fisheries within as well as without any State, wherever they are connected with the Commercial intercourse with any other State, or with foreign Nations.

601. It extends also to the regulation and government of seamen; to conferring privileges upon vessels engaged in the coasting trade; and to the navigation of vessels engaged solely in carrying passengers, as well as of those engaged in traffic, whether propelled by steam or otherwise.

602. The principles upon which a State Law, requiring importers and venders of foreign goods to obtain a licence from the State Government, was declared repugnant to the Constitution of the United

States, were held to apply equally to a similar interference with importations from one State to another.

603. Although the power of a State to regulate its purely internal Commerce, and establish its own police to control and promote that trade, and to guard the health and safety of its citizens, are undoubted; yet neither these, nor any other acknowledged State powers, can, consistently with the Federal Constitution, be so used as to obstruct or defeat the power of Congress to regulate Commerce among the States.

604. Nevertheless, if measures within the power of State Legislation do not come into actual collision with the powers of the General Government over navigable streams within a State, the National Courts can take no cognizance of these measures or their effects, where there has been no legislation of Congress, with which the operation of the State Law could interfere.

605. The power of Congress to regulate Commerce with the Indian tribes is to be construed in the same manner; and it extends equally to tribes living within, or without, the boundaries of particular States; or within, or without, the territorial limits of the United States; and the trade with them, in all its forms, is subject exclusively to the regulation of Congress.

606. The Indian territory within the United States composes a part of the Union; and in the intercourse between the General Government and foreign Nations, in commercial regulations, and in any attempt at intercourse between foreign Nations and the Indian inhabitants, they are considered as within the

jurisdictional limits of the United States, and subject to many of those restraints which are imposed by the latter on their own citizens.

607. These Indians acknowledge themselves in their Treaties to be under the protection of the United States, and admit that the Government of the Union shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as it shall think proper.

608. The tribes thus residing within the acknowledged boundaries of the Union, are not deemed *foreign Nations* within the meaning of the Constitution, but are considered as domestic dependent Nations, occupying a Territory to which the United States assert a title, which must take effect when the right of occupancy of the Indians ceases; and in the mean time, they are in a state of pupilage to the General Government.

609. They are considered by foreign Nations, as well as by the Federal Government, as so completely under the dominion of the United States, that any attempt to form a political connection with them, or to acquire their lands, would be considered as an act of hostility, and an invasion of the Territory of the United States.

610. They are distinguished in the Constitution by an appropriate name from foreign Nations, as well as from the several States composing the Union; and the objects to which the power of regulating Commerce may be directed, are divided into distinct classes, according to that distinction.

611. The principle adopted for determining the respective rights of the Maritime powers of Europe,

upon their discovery of different parts of the American Continent was, that discovery gave a title to the Government by whose subjects, or by whose authority, it was made, which might be consummated by possession.

612. The admission of this principle gave to the Nation making a discovery, the sole right of acquiring the soil, and of making settlements upon it; and whilst the principle itself shut out the right of competition amongst those who agreed to it, it could not annul the previous rights of those who were not parties to its adoption.

613. It regulated the right given by discovery amongst the European discoverers, but did not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery before the memory of man; and in giving an exclusive right to purchase, it did not found that right on a denial of the right of the possessor to sell.

614. The relation between the Europeans and the Natives, was determined, in every case, by the particular Government which asserted and could maintain this pre-emptive privilege, in the particular place; and the United States succeeded to all the claims of the antecedent Governments, both territorial and political; but no attempt has been made to enlarge them.

615. So far as those claims existed merely in theory, or were in their nature exclusive only of the claims of other Nations, they still retain their original character, and continue dormant; but so far as they have been practically exerted, they exist in fact, are understood by both parties, and have frequently been asserted by the one, and admitted by the other.

616. The general Law of European Sovereigns

respecting their claims in America, limited the intercourse of the Indians, in a great degree, to the particular potentate whose ultimate right of domain was acknowledged by the others; and the consequence was, that their supplies were chiefly derived from that Nation, and their trade confined to it.

617. Goods indispensable to their comfort, were received from the same source, in the shape of presents; and the strong arm of Government was interposed to restrain the disorderly and licentious from intrusions into their country, from encroachments on their lands, and from those acts of violence which were often attended with reciprocal murder.

618. In this protection the Indians perceived only what was beneficial to themselves; as it involved practically no claim on their lands, and no dominion over their persons; but merely bound them to the European Nation before the Revolution, as it has since, to the Federal Government, as dependent allies, claiming the protection of a powerful friend and neighbour, and receiving the advantages of that protection, without its involving a surrender of their National character.

619. Congress has from time to time passed Laws to regulate trade and intercourse with the Indians, which treat them as *Nations*, respect their rights, and manifest a purpose to afford that protection to them for which Treaties stipulate; which Laws, and especially the Acts now in force, consider the several Indian Nations as distinct political communities, having territorial boundaries, within which their authority is exclusive.

620. The Treaties and Laws of the United States contemplate the Indian territory as completely sepa-

rated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the Government of the Union; whilst the powers of Congress to regulate Commerce, to declare war, make peace, and conclude Treaties, comprise all that is required for regulating intercourse with the Indians.

621. *The Power to establish Post Offices and Post Roads*, is necessarily connected with the regulation of Commerce, and the promotion of the general welfare; as a regular system of free and speedy intercommunication is not only of importance to the mercantile interests, but of great general benefit.

622. This power is exclusive, so far as it relates to the conveyance of letters; but not in regard to Post roads, as it would be unnecessary for Congress to make another road where a sufficient one for the purpose already existed; whilst, on the other hand, no State has power to deny or obstruct the passage of the mail over its public roads.

623. The power of Congress, in relation to this subject, was brought into operation soon after the Constitution was adopted; and various provisions, in regard to Post Offices and the conveyance of letters and other articles by mail, have been enacted at different times, founded on the principle of the power's being exclusive as to those objects.

624. Under this power, in conjunction with the powers to raise money to provide for the general welfare, and to pass all laws necessary and proper for carrying into execution the powers vested in the General Government, funds have from time to time been set apart by Congress for *internal improvements* in the several States by means of roads and canals.

625. *The Cumberland road* was constructed under a covenant with the State of Ohio, that a portion of the proceeds of public lands lying within that State, should be applied to the opening of roads leading to it, with the consent of the States through which the road might pass.

626. But after the expenditures upon that road had exceeded the proceeds of the lands appropriated for its construction, bills passed by both houses of Congress at different times, appropriating funds for continuing it, as well as subsequent bills for similar objects, were severally objected to by successive Presidents of the United States, and eventually lost upon their return with the objections to Congress.

627. The Executive Department denied on those occasions, any such Constitutional power in Congress as the respective Bills assumed to exist; or that such power could be vested in the National Legislature, by the Act of a State consenting to its exercise.

628. Congress, however, still claim the power to lay out, construct, and improve Post roads and Military roads, with the assent of the States through which they pass, as well as to construct Canals through the several States, for promoting and securing internal Commerce, and for the more safe and economical transportation of troops and military stores in time of war; leaving the jurisdictional right over the soil to the respective States.

629. By an Act passed with the assent of the Executive in 1824, the necessary surveys, plans, and estimates, were authorized to be made of such roads and canals, as the President might deem of national importance, or necessary for the transportation of the public mail; and a large sum of money was ap-

propriated from the Treasury for defraying the expences incurred by the execution of this Law.

630. But in the year 1830 a Bill passed by both Houses appropriating a sum of money from the Treasury as a Subscription to the Stock of a Turnpike road exclusively within a State, was returned with objections by the President, and was finally lost in the House of Representatives, in which it had originated.

631. The objections of the President to this particular appropriation were founded on the principle that Congress were not authorized to appropriate money to any other objects than such as were included amongst the enumerated powers vested in the National Government; and he, moreover, considered that the work proposed to be aided did not fall within any of those powers, as it was of a local and State, and not of a general and national character.

632. This distinction seems conformable to the principle already stated, that "the action of the General Government may be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing any of the general powers of the Government."

633. *The Power "to coin money, and to regulate the value thereof, and of foreign coins,"* is rendered exclusive by a subsequent provision of the Constitution prohibiting the individual States from its exercise; whilst *the power "of fixing the Standard of*

*weights and measures,*" seems also, for the sake of uniformity, proper for the exclusive exercise by Congress; but as they have not legislated on this subject, it is presumed that, until they do, each State retains the right of adopting and regulating its own standard.

634. The power of coining money is one of the ordinary prerogatives of Sovereignty, and is almost universally exercised in order to preserve a proper circulation of good coin of a known value; and to secure it from debasements, it is necessary that it should be exclusively under the control and regulation of the Government.

635. The object of vesting this power in Congress, was to produce uniformity of value throughout the Union, and it is obvious that the exclusive possession of this power by the General Government, could alone secure a wholesome and uniform National currency; and prevent the embarrassments, vexations, and frauds, which the varying standards and regulations of the different States would introduce in the course of trade.

636. *The Power of Congress "to provide for the punishment of counterfeiting the public securities and current coin of the United States,"* necessarily follows the powers to borrow money and regulate the coin; as, without this, the preceding powers would be devoid of any adequate sanction.

637. This Power seems to be exclusive of that of the States, as it is an appropriate means afforded by the Constitution to carry into effect other delegated powers not antecedently existing in the States; yet it appears to be taken for granted by the Acts of Congress relative to the offences in question, that

cognizance of them may, under certain circumstances, be concurrently exercised by the State Courts.

638. *The Power "to establish an uniform system of Naturalization,"* is necessarily exclusive, especially as it is provided in a subsequent part of the Constitution, that "the Citizens of each State shall be entitled to all the privileges and immunities of Citizens in the several States;" and accordingly this power has been judicially held to be exclusive, on the ground of its direct repugnancy or incompatibility with the exercise of a similar power by the States.

639. The Constitution contains no definition of the character of a Citizen; but the term is used in plain reference to the Common Law, which is regarded not only as the means or instrument of exercising the jurisdiction conferred by the Constitution, but in many instances must be resorted to as the interpreter of its meaning.

640. At the time the Constitution was adopted, the Citizens of each State, collectively, constituted the Citizens of the United States; and were either *Native Citizens*, or those born within the United States, or *naturalized Citizens*, or persons born elsewhere, but who, upon assuming the allegiance, had become entitled to the privileges, of native Citizens.

641. All who were resident Citizens at the time of the Declaration of Independence, and deliberately yielded to that measure an express or implied sanction, became parties to it, and are to be considered as natives; their social tie being coeval with the Nation itself.

642. All persons born within the Colonies whilst subject to the British Crown, were natural-born Bri-

tish subjects; and it necessarily follows, that this character was changed by the separation of the Colonies from the parent State, and the subsequent acknowledgment of their independence.

643. The rule, as to the point of time at which Americans born before the separation, ceased to be British subjects, differs in the United States and in England; that established by the Courts in England adopts the date of the Treaty of Peace in 1783, whilst the Federal tribunals have fixed upon the date of the Declaration of Independence.

644. The settled doctrine in the United States is, that a person who left the country before the Declaration of Independence, and never returned, thereby became *an Alien*; and, as a general rule, the character in which Americans born before the Revolution are to be considered, depends on the situation of the party, and the election made by him, at the Declaration of Independence, according to our rule, and at the Treaty of Peace, according to the British rule.

645. Difficulties have occurred in cases where rights have accrued between these dates; but if the right of election be admitted at all, it must be determined by what took place during the Revolution, and between the Declaration of Independence and the Treaty of Peace.

646. It is the doctrine of the English Law, that natural-born subjects owe an allegiance which is intrinsic and perpetual, and cannot be divested by any act of their own; but it is a question which has been frequently and gravely debated in the Courts, whether this doctrine applies in its full extent to the United States.

647. The best writers upon public Law, although

they treat the subject somewhat loosely, seem generally to favour the right of the Citizen to emigrate and abandon his native country, unless there be some positive restraint by Law, or he is at the time in possession of some public trust, or his country be in distress or at war, and in need of his services.

648. The principle declared in some of the State Constitutions, that the Citizens have a natural and inherent right to emigrate, amounts to a renunciation by those States, of the English Common Law, as being repugnant to the natural liberty of mankind; provided emigration is intended in those cases to be used as synonymous with expatriation.

649. But the allegiance of Citizens *of the United States*, is due not only to the local Governments under which they reside, but primarily to the General Government, which alone affords them National protection; and the doctrine of final and absolute expatriation, although frequently discussed, remains yet to be finally settled in the Courts of the United States.

650. This doctrine, however, is not applied by the British Courts to Americans born before the Revolution, as the Treaty of Peace is deemed a release from their allegiance, of all British subjects, who remained in this country.

651. As the British doctrine is, that Americans born before the Revolution, by remaining in the United States after the Treaty of Peace, lost their character as British subjects; so the American doctrine is, that by withdrawing from the country, and adhering to the British Government after the Declaration of Independence, they lost, or rather never acquired, the character of American Citizens.

652. All persons born out of the jurisdiction of the United States, are termed *Aliens*; but there are some exceptions to this rule, derived from the ancient English Law; as in the case of children of public Ministers born abroad, whose parents owed not even a local allegiance to the foreign power; and all children born abroad of English parents, were considered as natives of England, if the father went and continued abroad in the character of an English subject.

653. By the existing Law of the United States relative to Naturalization, it is declared, that the children of persons who were, or had been, Citizens of the United States at the time of passing the Act, should, though born out of the United States, be considered as Citizens; but that the right should not descend to persons whose fathers had never resided within the United States.

654. Aliens coming to the United States, with the intention of permanently residing therein, have many inducements to become Citizens, as they are incapable, until naturalized, of possessing a stable interest in lands in many of the States, or of holding any civil office, or of voting at elections, or taking any active share in the administration of the General or State Governments.

655. A convenient and easy mode has been provided by Congress for removing the disabilities of Aliens; and the terms on which every Alien, being a free white person, can obtain the qualifications and privileges of a natural-born Citizen, are prescribed in the several Acts of Congress relative to the subject.

656. The rights of Aliens to the privilege of Naturalization are, by these Laws, submitted to the deci-

sion of Courts of Record; and a person duly naturalized, becomes entitled to all the privileges and immunities of a natural-born Citizen, except that a residence of seven years is requisite to enable him to hold a seat in Congress, and that he is not eligible to the office of President of the United States, or of Governor in several of the States.

657. *The Power of Congress "to establish uniform Laws on the subject of Bankruptcies,"* is intimately connected with the regulation of Commerce; and there are peculiar reasons why the National Government should be entrusted with this power, arising from the importance of preserving uniformity and equality of rights amongst the citizens of all the States, and of maintaining commercial credit and intercourse with foreign Nations.

658. Under Governments which authorize personal arrests and imprisonments for debts, it has been found necessary to provide for the relief of debtors, in cases of inevitable misfortune; and especially in the case of insolvent merchants, who, from the habits and nature of trade, are under the necessity of giving and receiving credit, and of encountering extraordinary hazards.

659. Bankrupt and Insolvent Laws, besides relieving the debtor, are intended to secure the application of his effects to the payment of his debts; and the distinction between them is not so clearly marked as to determine with positive precision what belongs exclusively to the one or to the other species of these Laws.

660. *Bankruptcy*, in the English Law, has by long and settled usage received an appropriate meaning; and has been considered applicable only to unfortunate *traders*, who do certain acts which afford evi-

dence of their intention to avoid the payment of their debts; or of their inability to discharge them.

661. It has been said that *Insolvent Laws* are such as merely liberate the person of the debtor, whilst Bankrupt Laws discharge him from his contracts; but this distinction is not supported by any uniformity of legislation, and it is the more difficult to discriminate between them, because Bankrupt Laws frequently contain those regulations which are generally found in Insolvent Laws, and Insolvent Laws some that are usual in Bankrupt Laws.

662. Although Bankrupt Laws are generally and properly confined in their operation to the trading classes, who are most exposed to pecuniary vicissitudes, yet, as misfortune and poverty may also overtake those who pursue other occupations, the latter are not excluded from the protection of the State Legislatures.

663. Nor ought traders or their creditors to be left without means of relief, in case Congress do not in their discretion think proper to exercise the power vested in them relative to Bankruptcy; and accordingly this power is held not to exclude the right of the States to legislate on the subject, except when the power has been actually executed by Congress.

664. The power of Congress to establish uniform Laws on the subject of Bankruptcy, is not granted in such terms, nor are its nature and character such as require that it should be exercised exclusively by Congress; consequently a State has a right to pass either Bankrupt or Insolvent Laws, provided there be no Act of Congress in force establishing a uniform system of Bankruptcy, with which the State Law would conflict.

665. But the power of the States does not extend to passing Bankrupt or Insolvent Laws *which discharge the obligation of antecedent contracts;* for, under the restriction contained in the Constitution, a State Law can discharge such contracts only as were made subsequently to its enactment, within the State and between its own citizens, and it does not extend to contracts, although made within the State, if made with a citizen of another State; nor to any contract, by whomsoever made, if made in other States or foreign countries.

666. The Legislature of the Union possesses the power of enacting Bankrupt Laws, and the State Legislatures of enacting Insolvent Laws; and a State has, moreover, authority to pass a Bankrupt Law when no Act of Congress exists on the subject with which the State Law might conflict. But whether Congress legislate on the subject or not, no Bankrupt, Insolvent, or other Law passed by a State, is permitted by the Federal Constitution "to impair the obligation of Contracts."

667. Although Congress has heretofore exercised the power vested in it relative to the subject, yet its former Bankrupt Laws were suffered to expire by their own limitation; and at present there is no uniform system of Bankruptcy in operation in the United States.

668. *The power of Congress "to prescribe," in its discretion, "by general Laws, the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States,"* has been found, as was intended, a convenient instrument of justice, and particularly beneficial on the borders of contiguous States, where persons and effects liable to judicial process, may be suddenly and clandestinely removed to a foreign jurisdiction.

669. The clause vesting this power previously declares that "full faith and credit shall be given in each State, to the public acts, records, and judicial proceedings of every other State;" and the Act passed by Congress in execution of this power, not only prescribes the manner of authentication, but declares that when so authenticated, they "shall have such faith and credit given to them in every Court within the United States, as they have by Law or usage in the Courts of the State from whence they are taken."

670. The Common Law gives to the Judgments of the Courts of one State the effect of *prima facie* evidence, or evidence open to impeachment, explanation, or contradiction, in the Courts of every other State; but the Constitution contemplates, and Congress have executed, a further power of giving a *conclusive* effect to such judgments as evidence admitting neither of impeachment, explanation, or contradiction, in the Courts of every other State, *provided* they have that effect in the State in which they are rendered.

## CHAPTER IV.

### OF THE POWERS VESTED IN THE FEDERAL GOVERNMENT, RELATIVE TO CERTAIN MISCELLANEOUS OBJECTS OF GENERAL UTILITY.

671. The Powers vested in the Federal Government, in relation to certain Specified objects of general utility, comprehend

I. A Power "to promote the progress of Science and the useful Arts, by securing, for limited times, to authors and inventors, the exclusive right to their writings and discoveries."

672. Before the American Revolution, the right of property of authors and inventors in their inventions and discoveries, was made a question in England; and it was finally settled by a Judgment of the House of Lords, reversing an almost unanimous decision of the Court of King's Bench, that this right had no foundation in the Common Law.

673. Even those Judges in the Court below, who, reasoning upon different principles, arrived at the opposite conclusion, seem to have been perplexed with the indefinite nature of such a right, and embarrassed by the consequences of admitting it.

674. To deprive men of genius of the right to the profits of invention was, on the one hand, discouraging to the useful arts, and injurious to the progress of learning and science; whilst, on the other hand, an unlimited right to the exclusive enjoyment of the fruits of genius and discovery, although for a time it might stimulate both, would, in its consequences, levy a perpetual tax on posterity, and impede the progress of invention itself.

675. Yet, to deny to inventors the fair profits derivable from their talents and exertions, seemed to be at variance with the dictates of natural justice and liberal policy, as it was, in effect, to deny to genius its appropriate reward; and to withhold from the powers of intellect, one of the strongest stimulants to their activity.

676. The existing Statute, enacted in the reign of Queen Anne, limiting the rights of authors and inventors to a term of years, was regarded as a compromise by which their claims were acknowledged, their rights defined and protected, and their reward secured; whilst a public interest was effectually created, and its benefit transmitted to posterity.

677. With this Statute, and this decision before them, and with a full knowledge of the principles and policy on which both were founded, the several States ceded to Congress the power "to promote the progress of Science and the useful Arts, by securing, for limited times, to authors and inventors the exclusive right to their writings and discoveries."

678. The English Law had limited the right to *a term of years;* the Power ceded by the Federal Constitution was to secure it *for limited times;* the former restricting the right to a definite term; the latter adopting the same principle, but leaving the *quantum* of interest to the discretion of Congress.

679. In execution of this power, several Acts have been passed by Congress, and are now in force, defining the times for which the exclusive rights of authors and inventors to their respective writings and discoveries, shall be enjoyed, and securing them in such enjoyment for different periods in different cases.

680. The object, therefore, of this provision of the Constitution, and of the Laws enacted under it, was twofold; first, to secure to inventors and authors a reward for their genius, by granting them an exclusive privilege for limited times; and secondly, to secure to the public the benefit of their inventions, by bringing the property in them into the common stock, after the expiration of the exclusive grant.

681. This double object can only be effected by such a construction of the Constitution as will leave to Congress the exclusive power of legislation on the subject; although it has been held in some of the State Courts that the power is concurrent and may be exercised by the State legislatures, provided their laws do not contravene the Acts of Congress.

682. Prior to the adoption of the Federal Constitution, legislative Acts in favour of valuable discoveries and improvements had been passed in some of the States; but their efficacy being confined to the respective limits of those States, the privileges they conferred were of little value; and it was provided in the first Act of the National legislature, in relation to the subject, that the applicant for the benefit of the national protection, should surrender his right under any State Law.

683. Hence it seems to have been supposed that Congress could not effectually secure the exclusive rights of authors and inventors, without the exercise of an exclusive power of legislation on the subject; and the necessity of such a power was an adequate reason for vesting it in the paramount authority of the Union.

684. The power under consideration falls under that class of cases, in which the exercise of a similar power by the States would be repugnant and contradictory to the power vested in Congress; and in relation to its particular objects, the power of Congress seems to be necessarily exclusive, both from *the terms*, and *the nature*, of the grant.

685. The power of Congress being to secure the exclusive rights of authors and inventors *for limited times*, a concurrent power in a State over the subject, must arise from the unceded portion of its sovereignty, and must consequently be a power *without limit of time;* but Congress could not secure to the inventor for *a limited time* the enjoyment of that which a State might grant to another *forever.*

686. The power of Congress seems, moreover, to be exclusive, in this case, from *the nature of the grant;*

because if each of the States have a concurrent right, its exercise by them would defeat the twofold object of the grant; which was to secure to the public the benefit and transmission of invention, as well as to reward authors and inventors for their productions and discoveries.

687. If the individual States have a concurrent power with the United States, it is evident that neither of those objects can be secured by Congress, for if Congress prescribe fourteen years as the limit of exclusive rights, and render them common at the expiration of that period; each State might fix a different period, or might secure a right of property to authors or inventors without limitation of time; or might reduce the term of exclusive enjoyment to a *minimum*, or even declare their writings and discoveries to be common property.

688. If a State in the exercise of any of the independent powers of legislation retained by it, comes into collision with this power of Congress, and privileges granted by the respective authorities of a State, and of the Union come into actual conflict, and are found repugnant or irreconcileable with each other, the State Law, or the right or privilege claimed under it, must, as in other cases of collision, yield to the superior power of Congress.

689. As a coasting licence not only ascertains the National character and the ownership of the vessel, but confers a right of Navigation;—and as a right to import goods involves the right to sell them; so a Patent or a Copyright not only ascertains the title of the Patentee as an inventor or an author, but confers on him a paramount right of using, and vending to others to use, his discoveries or writings.

690. There is this distinction, however, between

the property which an author may have in his writings, and that which an inventor may have in his discoveries, that the former has no beneficial property whatever in his works independent of what may be derived from their sale; whilst an inventor may, in a very restricted sense, use his invention for purposes of profit.

691. To both authors and inventors, a right of sale is nevertheless indispensable, though more manifestly so in the first case than in the last; as every other subject of property may be partially enjoyed, although the right of sale be restricted or forbidden; but the right of property of authors and inventors is so essentially connected with the right of sale, that the inhibition of that right annihilates the whole subject.

692. Accordingly the Acts of Congress passed in virtue of this constitutional power, secure to an author, or his assignee, "the sole right and liberty of printing, reprinting, *publishing and vending*," his work; and to a Patentee, "the full and exclusive right and liberty of making, constructing, *using, and vending to others* to be used," his invention or discovery, within the times limited for the enjoyment of their respective privileges.

693. A State may prohibit the use of any particular invention as noxious to the health, injurious to the morals, or in any respect prejudicial to the welfare of its citizens; but the Government of the Union must possess exclusively the power of determining whether an invention for which a Patent is sought, be useful or pernicious, *i. e.* whether it be one for which a Patent ought to be granted.

694. As the object of the constitutional power of Congress is the promotion of the *useful* Arts, an in-

vention useless or pernicious would not be a proper subject for its exercise; but should a Patent for such an invention have unadvisedly been issued, the National authority may repeal the Patent, and interdict the use of the noxious discovery.

695. If a thing in itself pernicious, be patented, the Patentee could recover no damages for the violation of his right; as his Patent would confer no right of property: and if a patented invention be useful in itself, but the art or manufacture to which it relates, be injurious in its exercise to the public health, the Patent would afford no protection for the nuisance; because private interests must in all cases yield to the public good—and not because the Federal power is superseded or controlled by the State Laws.

696. So if the author of an immoral or libelous book prosecute for the invasion of his Copyright, he could recover no indemnity; and if prosecuted for his offence against the State Law in issuing such a publication, the authority of the United States would not protect him; because, in the one case, his Copyright would invest him with no right of property; and in the other, would convey no right to use his property to the injury of others.

697. Restrictions imposed by State Laws, which are general in their operation, and not confined to Patentees or authors, in no sense derogate from the exclusive power of Congress to promote the progress of Science and the useful Arts.

698. But a construction of the Constitution, admitting that the States, in the exercise of an absolute discretion, may prohibit the introduction or use of any particular invention or writing, for which a Patent or a Copyright has been regularly obtained and continues

in full force, would render the power of Congress nugatory; and the States would substantially retain the very power they had nominally parted with.

699. The several States, nevertheless, retain all other means of rewarding genius, promoting Science and the Arts, of encouraging new discoveries, and inviting useful improvements, except this particular power ceded to the Union; and each State may use them in any way that ingenuity and good policy may dictate, and which does not interfere with the exercise of the power vested for those purposes in Congress.

700. The reason of this difference is, that all other modes of rewarding and encouraging genius, promoting Science, and inviting improvements in the useful Arts, may, without danger of being defeated by the conflicting Laws of co-ordinate Legislatures, be safely committed to the several States; whilst from the peculiar nature of the Federal system, the simple mode of securing a right of property to authors and inventors in their writings and discoveries, must, in order to effect that end, be exclusive in the General Government.

701. The next Power of a miscellaneous character which the Constitution vests in Congress, is

II. The Power "to exercise exclusive Legislation in all cases whatsoever, over such District not exceeding ten miles square, as might, by cession of particular States, and the acceptance of Congress," become the seat of the Government of the United States; and "to exercise like authority over all places purchased by the consent of the Legislatures of the States in which the same shall be situate, for the erection of

forts, magazines, arsenals, dock-yards, and other needful buildings."

702. Without complete supremacy and control at at the seat of the National Government, the Federal authority might be insulted, and its proceedings interrupted with impunity; whilst a dependence of the members of the General Government on one of the States for protection in the exercise of their duties, might subject the National Councils to the imputation of partiality.

703. This consideration had the greater weight, as the public archives liable to destruction would accumulate, and the gradual multiplication of public documents, at the stationary residence of the Government, would create further obstacles to its removal, and further abridge its necessary independence.

704. The necessity of a like authority over the forts, arsenals, dock-yards, and their appendages, established by the National Government, is not less evident; as the public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority of the particular State in which they are situate.

705. Nor would it be proper that places on which the security of the entire Union might depend, should be in any degree dependent on a particular member; whilst all scruples and objections are obviated by requiring the concurrence of the States concerned, in every such establishment.

706. The cessions of territory contemplated for the first object were duly made, and Congress were thereby enabled to execute this power, by establishing, under their own jurisdiction, a permanent seat for the National Government.

707. This Territory was erected into a "District" under the exclusive jurisdiction of Congress, by the name of "*the District of Columbia*," and "the City of Washington" was built in a central position therein; the necessary edifices were erected for the accommodation of the Federal Government, and its seat was permanently established there at the commencement of the present century.

708. Municipal Corporations have been created by Congress for managing the local concerns of the Federal City, and of the Cities of Georgetown and Alexandria, which are also both comprised within the limits of the ten miles square ceded by the States of Maryland and Virginia, for the purpose expressed in the Constitution.

709. Laws have from time to time been passed by Congress for the government of the District of Columbia, and local Courts have been established therein for the administration of justice. But the Acts of Congress adopt the Laws of Maryland and Virginia as the Law of the several portions of the District ceded by those States respectively, with such alterations only as were rendered necessary by the change of jurisdiction; but the separation and transfer of jurisdiction did not affect contracts existing between individuals.

710. Although the inhabitants of the District of Columbia ceased, by its separation from Maryland and Virginia, to be Citizens of those respective States; yet, as Citizens of the United States, they are entitled to the benefit of all commercial and political Treaties with foreign powers, and to the protection of the Union, at home as well as abroad.

711. Notwithstanding the power of Congress to

exercise exclusive jurisdiction over the Federal District includes the power of taxing its inhabitants, they do not in any manner participate in the election of members of the House of Representatives, or of Electors of President and Vice President.

712. But this departure from the rule which holds taxation and representation to be inseparable, is not deemed material or important; as the inhabitants of the District of Columbia voluntarily relinquished the right of representation, and adopted the whole body of Congress as their legitimate Government.

713. The next power falling within this miscellaneous class, is

III. The Power of Congress "to declare the punishment of Treason" against the United States.

714. It is a general principle, that every Government contains within itself, means and capacity for its own preservation; had the express enumeration, therefore, of this power been omitted in the Constitution, the Federal Government would not have been left dependent on the several States to protect it from treasons and conspiracies.

715. To have left the power of self-defence to inference, would nevertheless have been unwise and unsafe, as artificial and constructive treasons have been frequently converted into engines of oppression and tyranny; it was therefore deemed expedient to insert in the Constitution a definition of the crime, to prescribe the proof requisite for conviction, and to restrain Congress, in punishing it, from extending the consequences of guilt beyond the person of the offender.

716. Treason against the United States is accor-

dingly declared to consist "only in levying war against them, or in adhering to their enemies, giving them aid and comfort;" that "no person shall be convicted of Treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court;" and that "no attainder of Treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

717. The term "levying war," is of technical signification, and is adopted from the English Statute of Treasons, with the construction which has been given to it in the English Courts; and the "war" included in the term, comprehends internal rebellion as well as hostilities from abroad.

718. A conspiracy to subvert by force the Government of the United States, violently to dismember the Union, to coerce the repeal of a general Law, or to revolutionize a Territorial Government by force, if carried into effect by embodying and assembling a military force in a military posture, are *overt acts* of levying war; and not only those who bear arms, but those who perform the various and essential parts, which must be assigned to different persons for the purpose of prosecuting the war, are guilty of the crime of Treason.

719. But a mere conspiracy for any such purpose, unaccompanied by any overt act, is not Treason; and to constitute a "levying of war," there must be an assemblage of persons with intent to effect by force a treasonable purpose; but the mere enlistment of men for such a purpose, is not sufficient.

720. Nor, on the other hand, is it necessary that an individual should appear in arms, to constitute the guilt of Treason; for if war be actually levied, *i. e.* if

a body of men be actually assembled for the purpose of effecting by force a treasonable design, all those who perform any part in the conspiracy, however minute, or however remote they may have been from the scene of action, if actually leagued with the others, are considered as traitors.

721. Similar acts committed against the Laws or Government of a particular State, are punishable according to the Laws of that State; but adhering to a foreign nation at war with the United States, and affording it aid in the prosecution of hostilities, is Treason against the United States, and not against the particular State of which the party is a Citizen.

722. A confession of guilt made out of Court is excluded as evidence by the terms of the Constitution; but after the overt act of Treason is proved by two witnesses, such confession may be given in evidence by way of corroboration; and the testimony of the two witnesses must be to the same *overt act*, and not, as in England, to two different overt acts of the same species of Treason.

723. In affixing the penalty of death to the crime of Treason, Congress have acted on a construction of the Constitution, which assumes a discretion in them to omit forfeiture as a part of the punishment, *even during the life of the offender*; as they have declared, that "no conviction or judgment shall work corruption of blood, or *any forfeiture of estate*."

724. *Corruption of blood* is derived from the Common Law of England, in reference to the Feudal system of tenures, and signifies that an attainted person can neither inherit lands from his ancestors, retain those of which he is in possession, nor transmit them by descent to his heirs; and that he is also incapable

of transmitting a title derived by descent through him from a remote ancestor.

725. This doctrine is founded on a legal fiction, and is equally at variance with the liberal spirit of modern times, and the elementary principles of justice; and in carrying this power into execution, Congress has humanely and wisely stopped short of its constitutional authority.

726. The power of punishing the crime of Treason against the United States, is necessarily exclusive in the General Government, and a State cannot take cognizance of this offence, whatever jurisdiction it may exercise in relation to Treason committed exclusively against itself. But it is a question whether any case of Treason against a State can exist since the adoption of the Federal Constitution, which is not at the same time Treason against the United States, and merged in it.

727. Another Power of a miscellaneous nature vested in the Federal Government, is

IV. The Power of "admitting new States into the Union."

728. As the United States possessed, at the adoption of the Constitution, an extensive National Territory, and might acquire more either by conquest or cession, this power was with propriety vested in the National Government. But it was not granted without restriction, as "no new State can be formed or created within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, without the consent of the Legislatures of the States concerned, as well as of Congress."

729. Since the adoption of the Constitution, large

acquisitions of National Territory have been made by the purchases of Louisiana and Florida, and by cessions from the State of Georgia; and the constitutionality of the two former acquisitions, though formerly questioned, is now considered as settled beyond all practical doubt.

730. When the preliminary measures were taken for the admission of the State of Missouri into the Union, an attempt was made to include a prohibition against the introduction of Slavery into that State, as a condition of the admission; but the constitutional authority of Congress to impose such a restriction, was questioned on the ground of its inconsistency with the sovereignty of the State to be admitted; and of the equality of the latter with the other States.

731. The final result of the proceedings which authorized the erection of that State, seems to establish the authority of Congress to impose such a restriction, although none was applied in that case; and an objection of a similar character, which had been taken to the compact between Virginia and Kentucky, containing conditions upon which the latter was erected into a separate State, was overruled by the Supreme Court.

732. The next power to be enumerated in this miscellaneous class, is

V. The Power of Congress "to dispose of, and make all needful rules and regulations respecting the Territory, and other property belonging to the United States."

733. This Power is in itself obviously proper, and was specially requisite to avoid an objection which had been taken under the Confederation, to the con-

stitutional authority of Congress over the Territory ceded to the United States during the existence of that compact; and it is accompanied by a condition not only proper in itself, but probably rendered necessary by the jealousies and controversies which existed with regard to that Territory, and which provides that "nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

734. As the General Government possesses the right to acquire Territory, either by Conquest or by Treaty, it would seem to follow as an inevitable consequence, that it possesses the power to govern what it may so acquire, especially as the Territory, when acquired and held by the United States, does not thereby become entitled to self-government, as a State or as a Territory, and is not subject to the jurisdiction of any of the individual States.

735. The power of Congress over the public Territory beyond the limits of State jurisdiction, is exclusive and universal; and its legislation is subject to no control, but is absolute and unlimited, unless so far as it may be affected by stipulations in the cessions, or by the ordinance of 1787, under which parts of it were settled.

736. But the power of Congress to regulate the other National property, unless it has, by cession of the States, acquired exclusive jurisdiction therein, is not necessarily exclusive in all cases, notwithstanding the right to the soil may have been conveyed to the United States by the former proprietor.

737. The "guaranty," by "the United States to every State in the Union, of a republican form of Government," to "protect each of them against inva-

sion ; and on application of the Legislature, or of the Executive, when the Legislature cannot be convened, against domestic violence," may be considered as the

VI. Miscellaneous power vested in the General Government, as it gives to it a right of interference with respect to the objects of the guaranty.

738. Without this guaranty the interference of the General Government in repelling domestic dangers and commotions, which might threaten the existence of a State Constitution, and involve the destruction of other States, and even of the National Government itself, could not be demanded from it as a right ; and no succour could be constitutionally afforded by the Union, to the friends and supporters of the State Government.

739. In a confederated Government, founded on republican principles, and composed of republican members, the superintending Government ought to possess authority to defend the whole system from innovations affecting those principles ; and the more intimate the Union, the greater interest have its members in the political institutions of each other, and the greater right to insist that the forms of government under which the general compact was entered into, should be substantially maintained.

740. But the mere compact without the power to enforce it, would be of little value ; and hence the term "guaranty" indicates that the United States are authorized, and bound, if possible, to prevent every State in the Union from relinquishing a republican form of Government.

741. The Constitution, however, imposes no other

restriction upon the alteration of the State Constitutions, than that they shall not vary from the republican form; so that, whenever a State chooses to substitute another Republican Constitution in place of that previously existing, it has a right so to do; and is equally entitled to claim for it the benefit of the Federal guaranty.

742. Protection against invasion is due from every Government to the members composing it; and the Federal Constitution secures each State not only from foreign hostility, but against the ambitious or vindictive enterprize of its more powerful neighbours.

743. Protection against domestic violence is included in the stipulation with equal policy and propriety, as it affords the means of enforcing the guaranty whenever a faction, or a minority in a State, endeavours by force to subvert the republican form of its Government.

744. The guaranty, moreover, extends to the acts of a majority of a State when directed to any object of unconstitutional violence; in which case the General Government is equally bound to protect the State authority: and besides, there are certain parts of the State Constitutions, which are so interwoven with the Federal compact, that violence cannot be done to the one, without injury to the other.

745. This right of interference, however, can only be exercised when the violence is directed against the State Constitution alone; and in that manner accidentally and indirectly affects the Government of the Union; for, when the violence is immediately directed against the Federal authority, the National Government is invested with power to repress it, independently of any requisition of the State.

746. The last of the miscellaneous powers vested in the National Government, is

VII. The Power of Congress to propose Amendments to the Constitution, and to call Conventions for amending it, upon the application of two thirds of the States.

747. As it must have been foreseen that useful alterations of the Constitution would be suggested by experience, and rendered necessary by time and change of circumstances, it was requisite that some mode of amending it should be provided; and those adopted, guard equally against the facility which would have rendered the Government unstable, and the difficulty which might have perpetuated its faults.

748. Two modes of amendment are provided in the Constitution itself; one, at the instance of the General Government, through the instrumentality of Congress; the other at the instance of the States, by means of a General Convention.

749. Congress, whenever two thirds of each House concur in the expediency of an amendment, may propose it for adoption; and the approval of the President is not required to any amendment of the Constitution proposed by Congress.

750. The Legislatures of two thirds of the States, may require a Convention to be called by Congress, for the purpose of proposing amendments; and in either case, three fourths of the States, either through their Legislatures or by Conventions called by them for the purpose, must concur in every amendment before it becomes a part of the Constitution.

751. It is, however, provided, that "no amendment shall in any manner affect" the provisions of the

Constitution with respect to the importation of Slaves, and the proportional imposition of capitation and other direct taxes; and that "no State without its consent shall be deprived of its equal suffrage in the Senate."

752. Twelve amendments have been incorporated into the Constitution since its adoption; most of which have been explained in considering the subjects to which they respectively relate, and they are principally declaratory of the inalienable rights of individuals, or of those civil and political privileges which Society provides as the substitutes or auxiliaries of natural rights.

753. The amendments not already treated of, are also declaratory; and provide, by way of greater caution, that "the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the People;" and that "the powers not delegated to the United States, are reserved to the States respectively, or to the People."

754. The former of these amendments was intended to prevent any perverse or ingenious misapplication of the maxim, that "an affirmation in particular cases implies a negation in all others; and that a negation in particular cases implies an affirmation in all others."

755. The amendment last specified, is merely an affirmation of a necessary rule for the interpretation of the Constitution; which, being an instrument of limited and enumerated powers, what is not conferred by it, is withheld, and is retained by the State Governments, if vested in them by their Constitutions; and if not, remains with the People as a portion of their residuary sovereignty.

756. This amendment, however, does not confine the National Government to the exercise of *express* powers; and *implied* powers must necessarily have been admitted, unless the Constitution had descended to the regulation of the minutest details of legislation.

757. It is a general principle, that all bodies politic possess all the powers incident to a corporate capacity, without an express declaration to that effect; and one of those defects of the confederation which led to its abolition, was its prohibiting Congress from the exercise of any power "*not expressly delegated.*"

758. It could never, therefore, have been intended by the amendment in question, to abridge any of the Powers granted under the new Constitution, whether express or implied,—direct or incidental; but its manifest and sole design was, to exclude any interpretation by which other powers should be assumed beyond those which had been granted.

759. All the powers granted by the Constitution to the Government of the Union, whether express or implied,—direct or incidental, are left by the amendment in their original state; whilst all powers "not *delegated,*" (not all powers "not *expressly* delegated,") and not prohibited, are reserved.

## CHAPTER V.

### OF THE CONSTITUTIONAL RESTRICTIONS ON THE POWERS OF THE SEVERAL STATES.

760. The restrictions contained in the Federal Constitution on the powers of the States, have been distinguished into two sorts: the *first*, comprehend-

ing those limitations which are *absolute;* the *second,* such as are *qualified.*

761. The restrictions embraced by the former, prohibit any State from entering into any Treaty of Alliance or Confederation, from granting Letters of Marque and Reprisal, coining money, emitting bills of credit, or making any thing but gold or silver coin a tender in payment of debts; from passing any bill of Attainder, *ex post facto* Law, or Law impairing the obligation of Contracts; and from granting any title of nobility.

762. The policy of the prohibition against Treaties, Alliances, and Confederations by the several States, is justified by the advantage of uniformity in all matters relating to foreign intercourse; and by the necessity of an immediate responsibility to the Nation, of all those for whom the Nation is responsible to others.

763. If every State were at liberty to enter into Treaties, Alliances, and Confederacies with foreign States, or with other members of the Union, the power confided to the National Government, in regard to the former, would be rendered nugatory; whilst the whole Constitution might be subverted by the exercise of such a power amongst the States themselves.

764. The prohibition to grant *Letters of Marque and Reprisal,* is supported on the same general grounds of policy; as otherwise it would be in the power of a single State to involve the whole Union in war, at its pleasure; and although the issuing of Letters of Marque and Reprisal, is not always designed as a preliminary or provocation to war, yet in its essence it is a measure of hostile retaliation for unredressed

grievances, real or supposed, and is most generally succeeded by open hostilities.

765. The prohibition of the States to "coin money," was necessary to give complete effect to the power of the Union, in relation to the current coin; and it arose from a consideration of the danger and facility of circulating base and spurious coins, where the coins are various in value and denomination, and issued by several independent and irresponsible authorities.

766. The prohibition to "emit bills of credit," was amply justified by the losses sustained between the war of the Revolution and the adoption of the Constitution, from the fatal effects of paper money, and their injurious effects on public and private confidence, on the industry and morals of the people, on the National reputation, and on the character of Republicanism itself.

767. Were each state at liberty to regulate the value of its currency, whether of coin or of paper, there might be as many different currencies as there are States; and the commercial intercourse between them would be proportionally impeded; whilst retrospective alterations of the value of its currency, might be made by any State, in fraud, not only of its own Citizens, but of those of other States, as well as of the subjects of foreign powers; whereby harmony amongst the States, and confidence and peace with other Nations, would be interrupted, if not destroyed.

768. This restriction on the power of the States, in connexion with the prohibition to make any thing but gold or silver coin a tender in payment of debts, (which power is withdrawn from the States on the same principle,) has received a Judicial construction

of the utmost importance, both to the rights of the States and the authority of the General Government.

769. Although the term "bills of credit," in its enlarged, and perhaps in its literal sense, may comprehend any instrument by which a State engages to pay money at a future day, thus including a certificate given for money borrowed; yet the language of the Constitution, and the mischiefs intended to be prevented, have been held equally to limit its interpretation to paper redeemable at a future day, in anticipation of the public resources, and intended to circulate through the community for its ordinary purposes as money.

770. The Constitution considers the emission of bills of credit, and the enactment of tender Laws, as distinct operations, which may be separately performed independently of each other; and to hold that bills of credit may be emitted, if not made a lawful tender in payment of debts, would be in effect to expunge that distinct and independent prohibition from the Constitution.

771. Bills of Attainder, *ex post facto* Laws, and Laws impairing the obligation of Contracts, are contrary to the first principles of the social Contract, and to every principle of sound legislation: the two former are also expressly prohibited to Congress by the Federal Constitution, and to some of the State Legislatures, by declarations of rights prefixed to their Constitutions.

772. Bills of Attainder are such special Acts of the Legislature as inflict capital punishment upon persons whom they declare to be guilty of high offences, without trial or conviction in the ordinary course of judicial proceedings. They have generally been confined

to cases of Treason, and have never been resorted to, except in times of internal commotion and arbitrary misrule.

773. If the Bill inflict a milder punishment than death, it is called *a Bill of Pains and Penalties;* but in the sense of the Constitution, it seems that bills of Attainder include bills of Pains and Penalties, as it has been held that "a bill of Attainder may affect the life of an individual, or may confiscate his property, or both."

774. *Ex post facto* Laws, are those which render an act punishable in a manner in which it was not punishable when committed; and this definition embraces both Laws inflicting personal or pecuniary penalties, for acts before innocent, and Laws passed after the commission of an unlawful act, which enhance its guilt, or aggravate its punishment.

775. The term "ex post facto Law," is often supposed to comprehend all Laws having a retro-active operation; but its technical meaning is confined to such as declare criminal, an act done before the Law was passed, and which was not so at that time; and such as aggravate an offence, and render it more criminal than it was when committed, or inflict a greater punishment than the Law annexed to a crime when it was perpetrated; or to such as alter the rules of evidence, and admit different, or less testimony to convict the offender, than was required at the commission of the offence.

776. *Laws impairing the obligation of Contracts,* are generally retrospective in their operation, and are equally inconsistent with sound legislation, and the fundamental principles of the social contract. They are interdicted to the States, but not to the National Legislature.

777. By *Contracts*, in the sense of the Constitution, are understood :—1st. Every *executed* agreement, whether between individuals, or between individuals and a State ; and 2dly. Every *executory* agreement which confers a right of action, or creates a binding obligation, in relation to subjects of a valuable nature, and which may be asserted in a Court of Justice. But the term does not comprehend the political relations between a Government and its Citizens.

778. The power possessed by a State Legislature, to which every thing is granted that is not expressly reserved, and the temptations to the abuse of such a power, render express restrictions upon its exercise, in regard to Contracts, useful, if not necessary ; but the Legislature of the Union has no power to interfere with Contracts, unless it be expressly granted to them.

779. By the *obligation* of Contracts, in the meaning of the Constitution, is understood, not the mere *moral*, but the *legal* obligation ; and in this sense, a system of Bankruptcy impairs the obligation of Contracts when it releases the party from the necessity of performing them. But Congress is expressly invested with this power, with respect to Bankruptcies, as an enumerated, not as an implied power ; and in no other form can they impair the obligation of Contracts.

780. This prohibition, in regard to the States, extensively and deeply affects their legislative authority, as a compact between two States, or a grant from a State to individuals, is as much protected by this restriction, as a grant from one individual to another ; and the State is as much inhibited from impairing its own Contracts, or those to which it is a party, as it is from impairing the obligation of a Contract between two individuals.

781. The words of the prohibition not only comprehend equally *executed* and *executory* Contracts, but extend to them whether they are *express* Contracts, or such as declare on their face the terms of the agreement at the time of making it; or whether they are *implied* Contracts, or those of which the terms are not declared, but are such as reason and justice dictate from the nature of the transaction.

782. A legislative compact or grant, is a Contract within the meaning of the Constitution; and when a Law in its nature amounts to a Contract, and absolute rights have vested under it, its repeal can neither divest those rights, nor annihilate or impair a title acquired under it; for a grant is a Contract executed; and in no case, and for no cause, can a party impeach the validity of his own deed.

783. Legislative grants, then, are irrevocable in their nature, and are not held at the mere pleasure of the Government; nor can a Legislature repeal Statutes creating private Corporations, or confirming to them property acquired under the faith of previous Laws, and by such repeal, vest the property in others, without the consent or default of the Corporators.

784. This provision of the Constitution, however, has never been understood to embrace any other Contracts than those which respect property, or some object of value, and confer rights capable of being asserted in a Court of Justice.

785. Where the legal interest in literary or charitable Institutions is vested by Charter in Trustees, in order to promote the objects for which they were incorporated, and donations made to them, they are considered within the protection of the Constitution.

786. A grant to a private Trustee for the benefit

of another person, or for any special, private, or public charity, is within the prohibition; as a grant is not the less a Contract, because the possessor takes nothing under it for his own benefit; nor does a private donation, vested in Trustees for objects of a general nature, thereby become a public trust, which the Government may at its pleasure take from the Trustee.

787. Governments cannot revoke a grant, even of their own funds, when made to a private person, or to a Corporation, for special purposes; and after making such grants, they have no remaining authority to enforce the administration of the Trust, than such as is judicial.

788. All Corporate franchises are deemed legal estates; and all *incorporeal hereditaments*, as they are termed in the Law, such as Immunities, Offices, and Franchises, are rights regarded by it as valuable; and whenever they are the subject of a grant or Contract, are as much within the protection of the Constitution as any others.

789. The objection to a Law on the ground of its impairing the obligation of Contracts, does not depend on the extent of the change effected; any deviation from the terms of the Contract, by postponing or accelerating the period of performance, imposing conditions not expressed in the Contract, or dispensing with the performance of those which it contains, impairs its obligation.

790. A State Insolvent Law, which discharges a debtor from his Contract to pay a debt by a given time, and releases him without payment, from any future obligation to pay, impairs, because it entirely discharges, the obligation of the Contract, if the same were made anterior to the Law.

791. But the States may constitutionally pass such Insolvent Laws, operating upon future contracts made within the State, and between Citizens of the State; whilst, in regard to Contracts made subsequent to the Law, if made without the State, or within it, if between a Citizen of the State and a Citizen of another State, or an Alien, the State does not possess a jurisdiction co-extensive with the Contract, over the parties; and therefore the Constitution of the United States protects such Contracts from prospective, as well as retrospective legislation.

792. If, however, a creditor in any such case voluntarily makes himself a party to the proceedings under an Insolvent Law of a State, which discharges the Contract, he will be bound by his own act, and deemed to have abandoned his extra-territorial immunity.

793. The prohibition in question does not apply to Insolvent Laws, or other Laws impairing the obligation of Contracts, passed before the adoption of the Constitution, and operating upon rights of property vested before that time; and State Insolvent Laws have no operation whatever on Contracts made with the United States, for such Contracts are in nowise subject to State jurisdiction.

794. As the prohibition respecting *ex post facto* Laws applies only to criminal cases, and that now under consideration is confined to Laws impairing the obligation of Contracts; there remain many Laws of a retrospective character, which, however unjust, oppressive, or impolitic, may yet be constitutionally passed by the State Legislatures.

795. The last absolute prohibition is, that *no State "shall grant any title of nobility;"* the reason of which

is the same as that for the like prohibition on the National Government; viz. the inconsistency of such a power with that perfect equality, which is the basis of the National and State institutions; and it would have been useless to prohibit it to the former, if the latter were left free to exercise it.

796. The *qualified* prohibitions upon the powers of the States, are those which restrict them from laying "any imposts, or duties on imports or exports, except what may be absolutely necessary for executing their inspection Laws;" from laying "any duty on tonnage; keeping troops or ships of war, in time of peace; entering into any agreement or compact with another State, or with a foreign power; or from engaging in war, unless actually invaded, or in such imminent danger as will not admit delay—*without the consent of Congress.*"

797. The prohibition in regard to duties on imports and exports, and on tonnage, is founded on the same reasons which prove the necessity of submitting the regulation of Commerce to the National Government; and upon the further consideration that, from the inequality between different States as to commercial advantages, the interests of all would be best promoted, by submitting the whole subject to the control of Congress.

798. An Act of a State Legislature, requiring all importers of foreign goods, and others selling the same by wholesale, to obtain a license from the State, and to pay a sum of money therefor into the State Treasury, is repugnant to this provision of the Constitution.

799. An impost, or duty on imports, is a tax levied upon articles brought into the country, and especially

upon such as are brought into it for sale; and it is most usually levied or secured before the importer is allowed to exercise his right of ownership over them, because evasions of the law can be more certainly prevented by executing it whilst the articles are in its custody.

800. It would not, however, be less a duty on the articles, if it were levied on them after they were landed; as the policy and practice of levying and securing the duty before, or upon, entering the port, does not limit the power to that period for its exercise; and consequently the prohibition upon the exercise of such a power, is not so limited, unless the meaning of the term so confines it.

801. *Imports* are things imported, or the articles themselves which are brought into the country; and a duty on imports, is not merely a tax on the act of importation, but an impost on the thing imported; and is not confined in its signification to a duty levied whilst the article is entering the country, but extends to a duty levied after the article has actually entered it.

802. There is no difference in effect between a power to prohibit the sale of an article, and a power to prohibit its introduction into the country; and the one would be the necessary consequence of the other, as no goods would be imported, if none could be sold; nor can any object be accomplished by laying a duty upon importation, which may not be effected by laying a duty on the article, in the hands of the importer.

803. The prohibition on the States to lay a duty on imports, may, indeed, come in conflict with their acknowledged powers to tax persons and property

within their jurisdiction ; but the right which an importer acquires, not only to bring the articles into the country, but to mix them by sale with the common mass of property, does not interfere materially with the necessary power of taxation acknowledged to reside in the States.

804. When the importer has so dealt with the thing imported, as that it has become incorporated with the mass of property in the country, it has perhaps lost its distinctive character as an import, and become subject to the taxing power of the State ; but whilst it continues the property of the importer and remains in his warehouse, a State tax on it, is a duty on imports within the prohibition.

805. Although a State may lay a tax on occupations, yet in the instance of an importer of foreign goods, it makes no difference that the tax is imposed on the person of the importer ; for a tax on his occupation is in effect, a tax on importation, as it must add to the price of the article, and be paid by the consumer, or by the importer himself, in the same manner as a direct duty on the article.

806. The general power of taxation is retained by the States without being abridged by the grant of a similar power to the Government of the Union ; and is to be concurrently exercised by both Governments under their respective Constitutions ; but from the paramount authority of the Federal Government, it may withdraw any subject of taxation from the action of State power.

807. As the unavoidable consequence of the supremacy which the Constitution has declared, the States are restrained, without any express prohibition, from any exercise of their taxing power, which

in its nature is incompatible with, or repugnant to, the constitutional Laws of the Union.

808. As the States have no power by taxation, or otherwise, to retard, impede, burthen, or in any manner to control, the operation of constitutional Laws enacted by Congress to carry into execution the powers vested in the General Government, they cannot tax the Stock of the Bank of the United States, or the certificates issued by the Government for money borrowed on the credit of the United States; for the one is an instrument, and the others incidents of a power, essential to the fiscal operations of the Union.

809. The other *qualified* prohibitions have their origin in the same general policy which absolutely forbids any State from entering into any Treaty, Alliance, or Confederation; and from granting Letters of Marque and Reprisal; and they are supported by the same reasoning which establishes the propriety of confiding every thing relating to the power of declaring War, to the exclusive direction and control of the National Government.

810. Treaties of alliance, for purposes of Peace or War, of external political dependence, or general commercial privileges; Treaties of Confederation for mutual government, political co-operation, or the exercise of political sovereignty, or for conferring internal political jurisdiction, are absolutely prohibited to the States.

811. But compacts and agreements which apply to the mere private rights of sovereignty, such as questions of boundary between a State and a foreign province, or another State; interests in land situate within their respective boundaries, and other inter-

nal regulations for the mutual accommodation of States bordering on each other, may be entered into by the respective States, *with the consent of Congress.*

812. A total interdiction of such agreements or Contracts, might have been attended with permanent inconvenience or public injury to the States; and the consent of Congress to their being entered into, is required to guard against every infringement of the National rights, which might be involved in them.

813. As the maintenance of an Army and Navy by a State in time of Peace might produce jealousies and alarm in neighbouring States, and in foreign Nations possessing provinces bordering on its territory, the States are prohibited therefrom, unless with the consent of the National Government. But as a State may be so situated in time of war, as to render a military force necessary to resist an invasion, of which the danger may be too imminent to admit of delay in organizing it, the States have a right to raise troops, and fit out fleets for its own safety in time of war, without obtaining the consent of Congress.

## CHAPTER VI.

### OF THE PROVISIONS CONTAINED IN THE CONSTITUTION, FOR GIVING EFFICACY TO THE POWERS VESTED IN THE GENERAL GOVERNMENT.

814. The last class of Powers enumerated in the Constitution, consists of the several provisions, by which efficacy is given to the rest; and the

I. Of these is, the "Power to make all Laws necessary and proper for carrying into execution the foregoing Powers."

815. This power would have resulted by necessary implication, from the act of establishing a National Government and vesting it with certain powers; as without the *necessary and proper* means of executing those Powers, the ends proposed by them could never be attained.

816. The plain import of the clause is, that Congress shall have all the incidental and instrumental powers necessary and proper to carry into execution their express powers; and it seems to have been inserted in the Constitution from abundant caution, as it neither enlarges nor restricts any power specifically granted, nor grants any new power; but is merely a declaration to remove all uncertainty as to whether the means of carrying the powers previously granted into execution, were included in the grant.

817. Whenever a question arises concerning the constitutionality of a particular power of Congress, the first inquiry is, whether the power be expressed in the Constitution; if it be, all doubt as to its existence, must be at once removed; but if it be not contained in terms, in the Constitution, the inquiry then is, whether it be properly an incident to an express power, and necessary to its execution.

818. The question then arises as to the true interpretation of the terms "necessary and proper,"—*i. e.* whether the word "necessary," is used in its closest and most intense meaning, so as to exclude all means except such as are *absolutely and indispensably* necessary, and without which the grant would be nugatory; or whether these terms allow to Congress a choice of the most convenient and appropriate means, amongst those which are calculated to effect the end.

819. The latter construction has been adopted by

all the departments of the National Government, in reference to the Bank of the United States; which was accordingly considered to be constitutionally created under this power, as a known and usual instrument by which several of the specifically enumerated Powers of Congress are exercised.

820. Every Power vested in a Government, is in its nature sovereign, and gives a right to employ all the means fairly applicable to attaining the end of the Power, and not specially excepted from the grant of sovereignty, nor contrary to the essential ends of political society.

821. Although the Government of the United States is one of limited and specified Powers, yet it is sovereign with respect to its proper objects and declared purposes and trusts; and as it is incident to sovereign Power to erect Corporations, it is competent for the Government of the United States to create one in relation to the objects entrusted to its management.

822. The Power of creating a Corporation, though incident to sovereignty, is not a substantive and independent power, but merely an instrument or means by which other objects are accomplished; as a Corporation is never created or used for its own sake, but always for the purpose of effecting some end beyond its mere existence.

823. The implied Powers of Congress are as completely delegated as those which are specifically enumerated, and the power of erecting a Corporation may as well be implied as any other instrument or means of carrying into execution any of the express powers; as the exercise of such a power has a natural relation to the constitutional ends of the Government, in reference to its currency and fiscal operations.

824. The word "necessary" admits of degrees of comparison, and is often used in various senses; and in giving it a construction, the subject, the context, and the intention, are all to be regarded. A thing may be necessary, very necessary, or absolutely and indispensably necessary; or the word may mean no more than *needful*, *requisite*, or *conducive to*; in which sense it is held to have been used in this clause of the Constitution.

825. To have declared that the best means to carry into effect any specified power, should not be used, but those only without which the power would be nugatory, would have deprived Congress of the capacity to avail itself of experience, or to exercise its reason, and accommodate its legislation to circumstances.

826. If the end be legitimate, and within the scope of the Constitution, all means which are appropriate and plainly adapted to the end, are lawful; and the Judicial department cannot inquire into the degree of their necessity, without infringing upon the jurisdiction of the Legislature.

827. The next provision for giving effect to the Powers of the General Government, is,

II. The declaration that the "Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding."

828. The propriety of this clause arises from the nature of the Constitution, in establishing a National Government with certain limited powers; as such a Government could not exist or operate effectually on individuals, unless it were supreme in the exercise of those powers.

829. In all cases where the powers remaining in the States, are so exercised as to come in conflict with those vested in the National Government, it is a vital principle of perpetual operation, that the power which is not supreme must yield to that which is.

830. In a complex system, like that created by the relation between the Federal and State Governments, measures adopted respectively by the Union and by the States, to execute the acknowledged powers of each, must often be of the same description, and sometimes interfere in their operation.

831. The States may enact Laws, the validity of which may depend on their not interfering with, or being contrary to, an Act of Congress passed in pursuance of its constitutional powers; and in all such cases the inquiry is, whether the State Law has, in its application, come into collision with the Act of Congress.

832. If an actual collision be found to have taken place between a State Law and an Act of Congress, it is immaterial whether the former were passed by the State Legislature, in virtue of a concurrent power with Congress, or in virtue of a distinct and independent power, relating to a different subject; as in either case, the State Law, and the rights and privileges claimed under it, must yield to rights and privileges derived from the Act of Congress.

833. Although the Government of the Union, in

the exercise of its express powers, may use means which may also be employed by a State in the exercise of its acknowledged powers; yet this implies no claim, on the part of the United States, of a direct power, identical with the authority exercised by the State.

834. So also, if a State, in passing Laws on subjects acknowledged to be within its control, adopts a measure of the same character with one which Congress may adopt in the execution of any of its enumerated powers, the State in that case, does not derive its authority from the *residuum* which it retains of the particular power granted to Congress; but from some other power which remains in the State, and which may be executed by the same means which are used for the execution of the distinct power vested in the Union.

835. The same measures, or measures scarcely distinguishable from each other, may flow from distinct powers in the General and State Governments; but this does not establish the identity of the powers: and although the means used in their execution by each Government respectively, may sometimes approach so nearly as to be confounded with each other, yet under other circumstances, they may appear sufficiently distinct to establish the individuality of the powers to which they are subservient.

836. Questions respecting the extent of the powers actually granted, and their identity with those retained by the States, are perpetually arising in a judicial form; and in discussing them, the conflicting authorities of the General and State Governments must be brought into view, and the supremacy settled by that power in the Government which was created for the purpose of expounding the Constitution, as well as the Laws.

837. From this declaration of the supremacy of the Constitution, Laws, and Treaties of the United States, arises the duty of Courts of Justice to declare void any part of any State Constitution, or Law, which is repugnant to THE SUPREME LAW OF THE LAND.

838. In virtue of this provision, the Constitution and Laws of several of the States have, in a variety of cases, been declared void by the Judicial Power, on the ground of their repugnancy to, or incompatibility with, the Constitution, Laws, or Treaties of the United States.

839. In all cases of actual collision between the authority of a State, and the constitutional power of the United States, the State is bound by the construction of the Federal Government relative to its own powers; and no State has authority, either by an Act of ordinary legislation, or by a fundamental Law, to declare void a Law of the United States, or suspend its operation within the territorial jurisdiction of the State.

840. The State Courts may, in the ordinary course of administering justice, pronounce a Law of the United States, or an authority exercised under the National Government, to be void, as repugnant to the Federal Constitution; but this power is exercised subject to the appeal which lies in all such cases to the supreme National tribunal, whose decision alone is final and conclusive.

841. The early legislation of Congress, and the course of Judicial decisions since the Judiciary Act of 1789, concur in the recognition of this Supreme Law, and of a final interpreter of the Constitution, created by the Constitution itself, to the exclusion of the authority and jurisdiction of the several States.

842. As the Government of the Union exists over all the States, and operates upon individuals, it must, to the extent of its limited powers, possess the authority of final decision on all questions of conflicting jurisdiction, *by necessary implication*, independently of the express grant; as it is a power which on general principles, is inherent in all Governments.

843. As the Government of the Union has a Legislative and an Executive department of its own, and a Judiciary department with jurisdiction co-extensive with the Legislative Power; each of these departments must, from the nature of the powers vested in it, be supreme within the limits of those powers; and must necessarily judge, independently of State control, of the extent of its own powers, as often as it is called on to exercise them, or it cannot act at all.

844. Amongst the provisions for giving efficacy to the *Legislative* Powers of the Union, may be included,

III. Those specially vested in the Executive and Judicial departments, and particularly the provision extending the jurisdiction of the National Judiciary to all cases arising under the Constitution of the United States.

845. This last provision in effect creates, in the supreme Judicial authority of the Union, a common arbiter in all cases of collision between the power and authority of the Union, and of the several States, wherevever the controversy assumes a judicial form.

846. Such collisions have occurred in times of no extraordinary commotion, and have hitherto been adjusted by the operation of this power; but it was intended to afford to the Constitution, the perpetual means of self-preservation, and to secure the execu-

tion of the Laws of the Union, against other perils than those of common occurrence.

847. For this purpose a distinct and independent Judicial department was erected for the Union, and power was conferred on it to construe the National Constitution and Laws in the last resort, in every case in which questions of construction might arise, and to preserve the Constitution, and the Laws and Treaties of the United States, from violation, so far as judicial decisions might avail for that purpose.

848. In addition to this provision, powers necessary and proper to carry into effect the Judgments and Decrees of the Federal Courts, are conferred on the Chief Executive Magistrate, either directly by the Constitution itself, or indirectly, by vesting in the Legislative department, authority to confer it, which power has been duly executed by Congress.

849. Another provision for giving efficacy to the powers of the National Government, is found in

IV. The article requiring "the Senators and Representatives in Congress, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, to be bound by oath or affirmation to support the Constitution of the United States."

850. As the election of the President, Vice President, and Senators depends in all cases, and that of the House of Representatives depended in the first instance, and still, in fact, depends, on the Legislatures of the several States, it was necessary, in order to insure the stability of the General Government, to provide a sanction similar to that relied on for the continuance of the State Governments; and to obtain

by an appeal to the consciences of individuals, an equal security in both cases.

851. No State Power can discharge any individual from the obligation of this oath; and no member of a State Legislature can refuse to proceed at the appointed time, to elect Senators in Congress, or to provide for the election of Electors of President and Vice President, or of Representatives in Congress, without a violation of his duty, and of the oath to enforce its performance.

852. It is not, therefore, a matter of discretion with the States, whether they will continue the National Government, or break it up, by refusing to appoint Senators, or preventing the choice of Electors or Representatives; and although it were true that the Legislative powers of the Union would be suspended, if the States, or a majority of them, were to neglect to choose Senators; yet if any number of States less than a majority, should omit to elect them, Congress would not on that account, be the less capable of performing all its functions.

853. The last provision contained in the Constitution for giving effect to its powers, is that by which operation was given to the whole system, by declaring,

V. That "the ratifications of the Conventions of nine States should be sufficient for the establishment of the Constitution between the States ratifying the same."

854. The express authority of the People themselves was required to give validity to a Constitution which was to operate upon them as individuals; but to have required the unanimous ratification of the several States, would have subjected the essential

interests of the whole to the caprice or corruption of the smallest minority.

855. A question, however, of a very delicate nature arose with respect to this article, when the Constitution was proposed to the People for adoption, in consequence of the doubt entertained by some, whether the Confederation, which stood in the solemn form of a Compact between the States, could be superseded without the unanimous consent of the parties to that instrument.

856. It was not pretended that an individual State could withdraw from that compact, considered as a league or treaty, at its mere pleasure or discretion, nor be absolved from its perpetual obligation, except on the ground of the extreme necessity of self-preservation, or of a breach or violation of the compact by some other of the parties; of which breach or violation the parties themselves claimed to be judges only from the nature of the Confederation as a Treaty between independent Sovereignties.

857. The Convention which framed the Constitution was elected by the State Legislatures, and the instrument which came from their hands was a mere proposal without any pretensions to actual obligation; as such, it was reported to the former Congress, to be by them "submitted to a Convention of delegates to be chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification."

858. This course of proceeding was adopted, and the proposed form of Government was accordingly submitted to the People, who acted upon it in the only mode in which they could safely and effectually act on such an occasion, by assembling for the purpose, in their respective Conventions.

859. They assembled in their respective States, not merely for greater convenience, but from the necessity and propriety of the case, as there existed no authority under the Confederation for calling a general Convention of the People of the United States; and if such authority had existed, it would not have been a proper mode of assembling the People on an occasion in which they were in effect, to pass on virtual amendments of their State Constitutions.

860. Although the People of each State exercised a separate and independent voice, in the ratification of the Federal Constitution; it was nevertheless adopted by the People themselves, and not by the State Governments; and it derives its binding force solely from the act of the People in their State Conventions.

861. The Instrument submitted to them, purports on its face to proceed from the People of the United States; as such, it was adopted: and if the People of the several States had never before acquired a common character, they expressly assumed it, on that occasion.

862. The assent of the State Governments is implied, if not expressed, in their calling the Conventions and submitting the Constitution to the consideration of the People; but the People of each State were at perfect liberty to accept or reject it, and their act was final:—the Constitution required not the affirmance of the State Governments, and could not be negatived by them; but when adopted by the People, it became of complete obligation, and bound the States.

863. The same respective Sovereignties, which had separately established the State Governments, united

with each other in forming a paramount Sovereignty, and establishing a Supreme Government; for which purpose each yielded a portion of its individual Sovereignty, and modified its State Constitution, by rendering it subordinate to the Federal Power.

864. As the powers delegated to the State Governments by their Constitutions, were delegated by the People themselves, and not by a distinct and independent Sovereignty created by their act, those Governments were only competent to form a league like the Confederation; and when it was proposed to change that league into an effective Government, operating directly on the People as individuals, it became necessary to derive its powers directly from the People themselves.

865. As the Government of the Union is then emphatically and truly a Government of the People; as in form and substance it emanates from them; as its powers are granted by them, and are to be exercised on them directly and individually, for their common benefit; it cannot be abolished, nor its powers abrogated, except by their consent.

866. As the Constitution of the United States forms a union between the People of the several States intended to be perpetual, and establishes a National Government owing protection to individuals, and entitled to their obedience, no State can dissolve the relations subsisting between that Government, and the individuals subjected to its authority; unless the respective States retain power under the Federal Constitution to settle for themselves its construction in all doubtful cases.

867. But as no individual can judge for himself, and decide in his own case upon the nature and ex-

tent of his obligations as a Citizen of the Union, so the State within whose jurisdiction he resides, cannot judge for him; neither can it finally judge for itself of any alleged violation of the Constitution, and execute its decisions by its own power; as there is a Power created by the Constitution, both by implication from the nature of the Government which it establishes, and by express grant, which controls the decisions of every State, and prevents its construction of the Federal Constitution from being conclusive.

868. A State, therefore, having no power to interpret the Constitution finally for itself, cannot secede from the Union without adopting a proceeding essentially revolutionary in its character; and every attempt by a State to abrogate or annul a Law of the United States, is not only a usurpation of the powers of the General Government, but an aggression upon the equal rights of the other individual States.

869. From this examination of the fundamental principles, organization, and powers of the Government of the United States, it results:—

1. That the Federal Constitution was erected on the basis of those inalienable rights which the People of the several States derive, in common with all mankind, from their Creator; and of those principles and institutions which they had inherited from their ancestors, as subjects of the British Crown; modified by their situation and circumstances as Colonists, and by their successful vindication of their natural rights, in the assertion of their independence.
2. That it was formed on the Republican principle of *representation;* in due regard to which, the powers of Government were

separately delegated, and properly distributed to the Legislative, Executive, and Judicial departments, as each being equally the representative of the People, and chosen directly or indirectly by that portion of them, who from age, sex, or other circumstances, are competent to be entrusted with the exercise of that Power.

3. That the Federal Constitution was adopted by the People themselves, and not by the assent or ratification of the State Governments; and establishes a Government proper, operating upon every individual residing under its protection.
4. That this Government extends over the Union, as one National community or body politic; composed, not only of the people of the States, but to a certain degree of the States themselves, for the purpose of investing the States, as well as the People, with one National character.
5. That as the Union, thus formed, constitutes the Nation, the People of the several States have, for all the purposes of the Constitution, become one People, owing local allegiance to the States in which they reside—paramount allegiance to the National Government.
6. That all the Powers requisite to secure the objects of National Union, are vested in the General Government; whilst those only which are not essential to that object, are reserved to the States, or to the People.
7. That the National Government, though limited in its powers to National objects, is supreme in the exercise of those powers—whether express or implied, exclusive or concurrent, enumerated or auxiliary; and

that whenever any of those powers come into collision with the concurrent, or distinct and independent Powers of the States, the State Power, which is subordinate, must yield to the National Power, which is supreme.

8. That the Constitution and Laws of the United States, and Treaties made under the authority of the National Government, are the Supreme Law of the land; and that both from the nature of the case, and the provisions of the Constitution, the National Legislature must judge of, and finally interpret the Supreme Law, as often as it exercises acts of legislation; that the Chief Executive Magistrate in like manner possesses the power of judging of the nature and extent of his political authority, as often as he is called on to exercise it; and that in all cases assuming the character of a suit in Law or Equity, the Supreme Judicial tribunal of the Union, is the final interpreter of the Constitution.

9. That no State authority has power to dissolve the relations existing between the Government of the United States, and the People of the several States; and consequently, that no State has a right to secede from the Union, except under such circumstances as would justify a Revolution in the Government; and that an attempt by any State to abrogate or annul an act of the National Legislature, is a direct usurpation of the powers of the General Government, an infringement on the rights of all the other States, and a plain violation of the paramount obligation of its members, to support and obey the Constitution of the United States.

870. Unless such were the principles and character of the Federal Constitution, it would not have delivered the People of the United States from the evils they experienced under the Confederation; nor have accomplished, as it has hitherto, most effectually and happily, the great ends for which it was ordained,—by "FORMING A MORE PERFECT UNION, ESTABLISHING JUSTICE, INSURING DOMESTIC TRANQUILLITY, PROVIDING FOR THE COMMON DEFENCE AND GENERAL WELFARE, AND SECURING THE BLESSINGS OF LIBERTY TO THEM, AND THEIR POSTERITY."

# APPENDIX.

## CONSTITUTION OF THE UNITED STATES.

*The Constitution framed for the United States of America, by a Convention of deputies from the States of New Hampshire, Massachusetts, Connecticut, New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, at a Session begun May 25, and ended September 17, 1787.*

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I.

#### SECTION I.

All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

#### SECTION II.

I. The house of representatives shall consist of members chosen every second year, by the people of the several states: and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

II. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

III. Representatives and direct taxes, shall be apportioned among the several states, which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the

first meeting of the congress of the United States; and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand: but each state shall have at least one representative: and, until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania eight; Delaware one: Maryland six; Virginia ten; North Carolina five; South Carolina five; and Georgia three.

IV. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

V. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

I. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

II. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year: so that one third may be chosen every second year. And if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

III. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

IV. The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

V. The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president, or when he shall exercise the office of president of the United States.

VI. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried,

the chief Justice shall preside: and no person shall be convicted, without the concurrence of two thirds of the members present.

VII. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

SECTION IV.

I. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

II. The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

I. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

II. Each house may determine the rules of its proceedings; punish its members for disorderly behaviour; and with the concurrence of two thirds, expel a member.

III. Each house shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may in their judgment require secrecy: and the yeas and nays, of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

IV. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

I. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to, and returning from the same;

for any speech or debate in either house, they shall not be questioned in any other place.

II. No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house, during his continuance in office.

SECTION VII.

I. All bills, for raising revenue, shall originate in the house of representatives: but the senate shall propose or concur with amendments, as on other bills.

II. Every bill, which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve it, he shall sign it: but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered: and, if approved by two-thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

III. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, be approved by him; or, being disapproved by him, shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The congress shall have power—

I. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States: but all duties, imposts, and excises, shall be uniform throughout the United States.

II. To borrow money on the credit of the United States.

III. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

IV. To establish a uniform rule of naturalization; and uniform laws on the subject of bankruptcies, throughout the United States.

V. To coin money; to regulate the value thereof, and of foreign coin; and fix the standard of weights and measures.

VI. To provide for the punishment of counterfeiting the securities and current coin of the United States.

VII. To establish post offices, and post roads.

VIII. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

IX. To constitute tribunals inferior to the supreme court.

X. To define and punish piracies, and felonies committed on the high seas, and offences against the law of nations.

XI. To declare war; grant letters of marque and reprisal; and make rules concerning captures on land and water.

XII. To raise and support armies. But no appropriation of money for that use shall be for a longer term than two years.

XIII. To provide and maintain a navy.

XIV. To make rules for the government and regulation of the land and naval forces.

XV. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

XVI. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

XVII. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

XVIII. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or any department or office thereof.

SECTION IX.

I. The migration or importation of such persons as any of

the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight; but a tax may be imposed on such importation, not exceeding ten dollars for each person.

II. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

III. No bill of attainder or ex post facto law shall be passed.

IV. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

V. No tax or duties shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state, over those of another: nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

VI. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

VII. No title of nobility shall be granted by the United States: and no person, holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

### SECTION X.

I. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

II. No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws, shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty on tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

SECTION 1.

I. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows.

II. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives, to which the state may be entitled in the congress. But no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

III. The electors shall meet in their respective states, and vote by ballot for two persons, one of whom at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then, from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states: and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.

IV. The congress may determine the time of choosing electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

V. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president. Neither shall any person be eligible to that office who shall not have attained

to the age of thirty-five years, and been fourteen years a resident within the United States.

VI. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may, by law, provide for the case of removal, death, or inability both of the president and vice-president, declaring what officer shall then act as president: and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

VII. The president shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected: and he shall not receive, within that period, any other emolument from the United States, or any of them.

VIII. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States; and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION II.

I. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion in writing of the principal officers in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

II. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

III. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

He shall from time to time give to the congress information of the state of the union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses or either of them; and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time ordain and establish. The judges both of the supreme and inferior courts, shall hold their office during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

I. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof and foreign states, citizens, or subjects.

II. In all cases, affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

III. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

I. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

II. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

## ARTICLE IV.

SECTION I.

Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the congress may, by penal laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

I. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

II. A person charged in any state with treason, felony, or other crimes, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

III. No person, held to service or labour in one state under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION III.

I. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states—without the consent of the legislatures of the state concerned as well as of the congress.

II. The congress shall have power to dispose of, and make

all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

The United States shall guarantee to every state in this union, a republican form of government; and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments; which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

## ARTICLE VI.

I. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

II. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

III. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as

a qualification to any office or public trust under the United States.

### ARTICLE VII.

The ratification of the convention of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in the convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have subscribed our names.

GEORGE WASHINGTON, President,
and delegate from Virginia.
(Attest) WILLIAM JACKSON, Secretary.

---

## AMENDMENTS.

*The following Articles in addition to, and amendment of, the constitution of the United States, having been ratified by the legislatures of nine states, are equally obligatory with the constitution itself.*

I. CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger: nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the state and district wherein the crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved: and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

VIII. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishment inflicted.

IX. The enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

XII. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall

then be counted: the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president, shall be vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

# INDEX.

THE END.

RETURN TO the circulation desk of any
University of California Library
or to the
NORTHERN REGIONAL LIBRARY FACILITY
Bldg. 400, Richmond Field Station
University of California
Richmond, CA 94804-4698

ALL BOOKS MAY BE RECALLED AFTER 7 DAYS

- 2-month loans may be renewed by calling (510) 642-6753
- 1-year loans may be recharged by bringing books to NRLF
- Renewals and recharges may be made 4 days prior to due date.

DUE AS STAMPED BELOW

AUG 10 1999

JUN 05 2001

12,000 (11/95)

YB 08162